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THE OFFICIAL MONTH IN REVIEW

PRESIDENT Elpidio Quirino signed shortly before midnight of December 31, 1950, Executive Order No. 392 reorganizing the different Executive departments, bureaus, offices and agencies of the Republic of the Philippines. The order which took effect on January 1, 1951 reduced the departments of the Government from 13 to 10. The order provides for gratuities for officials and employees to be laid off and for a standardization of salaries of civil service employees.

IN its meeting on January 2, the Cabinet approved the sending of a survey party to Japan to study the systems and methods of development and operation of home industries for adoption in the Philippines. The party will also survey the operation of war economy in Japan, especially with regard to stockpiling and related fields which the Philippines can adopt in the event of war.

ON the recommendation of the Reorganization Commission headed by Ramon Fernandez, the President issued Executive Order No. 394 on January 2 creating two offices to handle the accounting and auditing work for the Philippine Army effective as of July 1, 1950. In another executive order numbered 393 issued on the same day, the Central Luzon Agricultural School in Muñoz, Nueva Ecija, was converted into a college to offer, in addition to its present four-year secondary course in agriculture, collegiate courses leading to the title of associate in agriculture and the degrees of bachelor of science and master of science in agriculture.

ON January 4, the President issued an executive order consolidating the Social Welfare Commission and the President's Action Committee on Social Amelioration into the Social Welfare Administration in conformity with the government organization plan. Mrs. Asuncion A. Perez automatically became the head of the new office with the title of social welfare administrator.

AT the Cabinet meeting on January 5, the President signed an executive order consolidating the Philippine legations in Rome, Paris, and Madrid into one embassy with headquarters in Madrid. The newly created embassy shall exercise jurisdiction over the Philippine legations in Rome, Paris, the Vatican, Brussels, and The Hague.

Another order signed by the President during the same Cabinet meeting changed the membership of the Deportation Board by making the commissioner of immigration a member of the board instead of the first deputy commissioner of immigration. The judge advocate general of the Armed Forces of the Philippines or his representatives has also been made a member of the board.

THE President was deeply grieved upon learning of the death of NBI Director Joaquín Pardo de Tavera who succumbed to a heart attack at 8:40 a. m. on January 6. The President said that in Tavera's demise "the Philippines has lost a worthy son and noble-minded citizen." To take his place, Brig. Gen. Alberto Ramos was designated on the same day as acting chief of the National Bureau of Investigation.

In the evening of the same day, the President gave a dinner in honor of Secretary of Foreign Affairs and Mrs. Carlos P. Romulo.

THE period from January 15 to February 14 was designated for this year's Boy Scouts and Girl Scouts national fund campaigns outside Manila in proclamations issued by the President on January 8 and January 15.

UPON the recommendation of Secretary of Justice Jose P. Bengzon, President Quirino has authorized three divisions of the Court of Appeals to hold sessions in the Visayas and in Baguio during the months of April and May to decide and dispose of pending cases that have to be acted upon not later than June 30, 1951, Malacañan announced on January 9.

THE undersecretaries of the various departments of the Government took steps in their first meeting held on January 11 to execute President Quirino's directive to the Cabinet to expedite government business by the elimination of red tape or round-about routes. A set of rules to be followed in the handling of routine and urgent correspondence to effect not only speedy action but economy was approved.

SPEAKING before the first annual meeting of the Supreme Council of Scottish Rite of Freemasons in the Philippines on January 11, President Quirino said that he could not think of anything more appropriate than to appeal to them "as individuals and as a brotherhood to help create here in our midst the moral and spiritual climate conducive to goodwill, trust, and unity." [See HISTORICAL PAPERS AND DOCUMENTS, for full text of the address.]

THE Cabinet on January 12 decided to muster hardened guerrillas into the fight against the Huks and bandits, after hearing a lengthy report by Secretary of National Defense Ramon Magsaysay on the latest Huk atrocities in Bataan and Tarlac. The President has accepted the offer of Col. Marking Agustin to lead three companies of battle-tested guerrillas into the field.

PRESIDENT Quirino took time out on January 13 from his official duties to join fellow law alumni of the University of the Philippines in celebrating their 40th homecoming in Diliman, Quezon City. Speaking before about 500 alumni gathered at luncheon in the U. P. social hall, the President urged his fellow alumni to lay aside "past political differences" and reiterated his appeal for national unity in the face of the current world situation.

ON January 13, Malacañan announced approval of the recommendation of the Department of National Defense to confer the Philippine Legion of Honor award (Commander degree) upon Commander Charles Pierce of the U. S. Coast and Geodetic Survey "for exceptionally meritorious services to the Republic of the Philippines," in recognition of his invaluable services in the rehabilitation of the Bureau of Coast and Geodetic Survey during the years 1947 to 1950.

AFTER the induction of Brigadier General Calixto Duque as acting chief of staff of the Armed Forces of the Philippines on January 15, the President instructed him to proceed with the reorganization of the armed forces with the end in view of producing "a revitalized and respectable army capable of fighting not only with its might but also with human feelings to inspire the confidence of the people."

IN his 27th monthly radio chat broadcast in the evening of January 15, the President declared that "in the crises that we face today, the ultimate protection and preservation of our cherished liberty and our survival itself must depend on the quality of our spirit—of faith, love and loyalty to our country, of self-sacrifice, or selflessness and solidarity." [See HISTORICAL PAPERS AND DOCUMENTS for full text of the President's radio chat in this issue.]

ON January 16, the President signed a proclamation declaring the period from February 15 to March 14 for this year's annual fund campaign of the Philippine National Red Cross.

SPEAKING before a large delegation of Chinese chamber of commerce presidents and leaders who paid a courtesy call at Malacañan on January 20, the President appealed to all Chinese nationals in the country to rally with the Filipinos in the common fight against communism.

PRESIDENT Quirino submitted to Congress on January 23 his executive order reorganizing the Government, together with its Budget which is five million pesos lower than the General Appropriations for 1950-1951. The reduced Budget which amounts to ₱340,545,970 took effect on January 1,

PRESIDENT Quirino received on behalf of the Philippine government a one million-peso check from James McI. Henderson, alien property administrator of the United States, in turn-over ceremonies held at Malacañan's council of state room on January 25. The check representing the proceeds from the sale of enemy-owned property administered by the PAPA, together with the title to four parcels of real estate located in Davao and Quezon with an aggregate area of 520,000 square meters, were turned over to the Philippine government through the signing of transfer documents and the token payment of four one-peso bills by President Quirino.

On the same day, the President signed Proclamation No. 236 declaring the first week of March every year as National Nutrition Week, and Proclamation No. 237 reserving a certain portion of land in Abulug, Cagayan, for nursery site purposes.

TWO leading American businessmen visiting Manila, Neil McElroy, president of Procter and Gamble, and Marvin Wood, California businessman, were luncheon guests of President Quirino at Malacañan at noon of the same day. Present at the luncheon were presidents of the different chambers of commerce and members of the presidential party which accompanied President Quirino in his visit to the United States in 1949. Assurance of full government protection and fair business opportunities to prospective foreign investors was given by the President when the two visitors paid a courtesy call at Malacañan in the morning.

THE President had an enlightening talk on the problems of tourism with officials of Northwest Airlines headed by its vice-president, Amor Culbert, who paid a social call at Malacañan on January 27. The President assured his visitors of his deep interest in fostering tourist trade in the Philippines.

IN his speech welcoming President and Mrs. Achmed Sukarno of Indonesia at the international Airport on January 28, President Quirino declared that the occasion was "indeed a historic moment in the life of the peoples of Southeast Asia," and that it was "with a genuine fraternal feeling" that he was welcoming the distinguished visitors on behalf of the Filipino people.

At the reception given by the President the next day at Malacañan in honor of the distinguished visitors, government officials headed by President Quirino and high diplomatic and consular officials danced the *rigodon de honor*.

ON January 31, the President signed Executive Order No. 406 fixing the ceiling prices of certain brands of imported foodstuff.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 396

CONSOLIDATING THE SOCIAL WELFARE COMMISSION AND THE PRESIDENT'S ACTION COMMITTEE ON SOCIAL AMELIORATION INTO THE SOCIAL WELFARE ADMINISTRATION.

Pursuant to the powers vested in me by Republic Act Numbered Four hundred twenty-two, I, Elpidio Quirino, President of the Philippines, do hereby order:

The Social Welfare Commission and the President's Action Committee on Social Amelioration are hereby consolidated into the Office of Social Welfare Administration. The present Commissioner of Social Welfare shall be the head of the office and shall hereafter be known as the Social Welfare Administrator.

The personnel, powers, duties, functions, activities, equipment, materials, properties and records of the Social Welfare Commission and the President's Action Committee on Social Amelioration are hereby transferred to the Social Welfare Administration.

Done in the City of Manila, this 3rd day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 397

PROVIDING FOR THE REORGANIZATION AND CONVERSION OF THE PHILIPPINE LEGATIONS IN ROME, PARIS, AND MADRID INTO THE PHILIPPINE EMBASSY IN MADRID, WITH CONCURRENT JURISDICTION OVER THE PHILIPPINE

LEGATION IN ROME AND THE CONCURRENT PHILIPPINE LEGATIONS IN PARIS, THE VATICAN, BRUSSELS AND THE HAGUE, AND FOR OTHER PURPOSES.

Pursuant to the powers vested in me by Republic Act Numbered Four hundred twenty-two, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The concurrent Philippine Legations in Rome, Italy and Paris, France and the Philippine Legation in Madrid, Spain are hereby reorganized and converted into the Philippine Embassy in Madrid, with concurrent jurisdiction over the Philippine Legation in Rome and the concurrent Philippine Legations in Paris, the Vatican, Brussels and The Hague. The Embassy and the Legations shall have their main offices in Madrid and Paris, respectively.

SEC. 2. The combined appropriations amounting to Two hundred ninety-seven thousand, four hundred seventy-five pesos (P297,475.00) authorized in Republic Act Numbered Five hundred sixty-three for—

(a) The Philippine Legation in Madrid, Spain (Item D-IV-7 (e), pages 78-80)	P131,750.00
(b) The concurrent Philippine Legations in Rome, Italy and Paris, France (Item D-IV-7 (f), pages 80-82)	165,725.00
Total	P297,475.00

are hereby re-allotted for the operation and maintenance of the Philippine Embassy in Madrid, with concurrent jurisdiction over the Philippine Legation in Rome, and the concurrent Philippine Legation in Paris, the Vatican, Brussels and The Hague during the fiscal period from July first, nineteen hundred and fifty to June thirtieth, nineteen hundred and fifty-one, except as otherwise herein stated, as follows:

PHILIPPINE EMBASSY IN MADRID, SPAIN

(Diplomatic Post, Class I)

SALARIES AND WAGES

The Ambassador

1. The Ambassador at P12,000 for six months only (Jan. 1 to June 30, 1951)	P6,000.00
Supplementary salary	3,000.00
Living quarters allowance	12,000.00
Post allowance	6,000.00
2. One foreign affairs officer, class II	6,900.00
Excess of basic salary	300.00
Supplementary salary	3,450.00
Living quarters allowance	4,800.00
Post allowance	2,400.00
3. One foreign affairs officer, class III, at P6,000, for seven months only (July 1, 1950 to Jan- uary 31, 1951)	3,500.00
Supplementary salary	1,750.00

Living quarters allowance	P2,275.00
Post allowance	1,225.00
4. One commercial attache (by detail)	
Supplementary salary	3,750.00
Living quarters allowance	4,800.00
Post allowance	2,400.00
5. One administrative, finance and property officer	
Supplementary salary	4,800.00
6. One assistant at P4,800 for six months only (Jan. 1 to June 30, 1951).....	2,400.00
Supplementary salary	600.00
7. One assistant	3,120.00
Supplemental salary	2,280.00
8. One interpreter-writer	1,920.00
Supplemental salary	2,280.00
9. One clerk-stenographer	1,920.00
Supplemental salary	2,880.00
10. One clerk-receptionist	1,800.00
Supplemental salary	1,200.00
11. One clerk-messenger	900.00
Supplemental salary	300.00
12. One chauffeur	1,560.00
Supplemental salary	840.00
13. One caretaker-janitor	1,800.00
Supplemental salary	600.00

PHILIPPINE LEGATION IN ROME, ITALY

14. One foreign affairs officer, class III	6,000.00
Supplemental salary	3,000.00
Living quarters allowance	3,900.00
Post allowance	2,100.00
15. One administrative, finance and property officer	
Supplemental salary	3,960.00
16. One clerk	2,040.00
Supplemental salary	1,800.00
17. One clerk-stenographer	1,200.00
Supplemental salary	600.00
18. One general utility clerk-helper	420.00
Supplemental salary	600.00
19. One chauffeur	240.00
Supplemental salary	600.00
Supplemental salary	240.00

CONCURRENT PHILIPPINE LEGATION IN
PARIS, THE VATICAN, BRUSSELS
AND THE HAGUE

20. The Minister	10,000.00
Supplementary salary	5,000.00
Living quarters allowance	15,000.00
Post allowance	9,000.00
21. One foreign affairs officer, class II	6,900.00
Excess of basic salary	300.00
Supplementary salary	3,450.00
Living quarters allowance	4,800.00
Post allowance	2,400.00
22. One foreign affairs officer, class III	6,000.00
Supplementary salary	3,000.00
Living quarters allowance	3,900.00
Post allowance	2,100.00

23. One administrative, finance and property officer	P2,040.00
Supplemental salary	3,060.00
24. One assistant at P2,040 for six months (January 1 to June 30, 1951)	1,020.00
Supplemental salary	1,380.00
25. One clerk-stenographer	1,800.00
Supplemental salary	3,000.00
26. One clerk-messenger	1,200.00
Supplemental salary	600.00
27. One chauffeur	1,200.00
Supplemental salary	600.00
28. One clerk-bookkeeper	720.00
Supplemental salary	480.00
29. One caretaker and general utility helper	960.00
Supplemental salary	480.00

MISCELLANEOUS

30. For the employment of alien personnel as the needs of the service may require	2,000.00
31. Additional allowance for post, not exceeding P2,700 per annum, to the foreign affairs officer performing duties of charge d'Affaires in Rome	2,700.00
Total for salaries and wages	<u>P220,540.00</u>

SUNDRY EXPENSES

1. Traveling expenses of personnel	7,250.00
2. Freight, express and delivery service	3,500.00
3. Postal, telegraph, telephone, cable and radio service	6,000.00
4. Illumination and power service	1,100.00
5. Rentals of buildings and grounds	22,800.00
6. Consumption of supplies and materials	8,000.00
7. Printing and binding reports, documents and publications	185.00
8. Maintenance and repair of equipment	1,500.00
9. Other services	3,800.00
Total for sundry expenses	<u>P53,635.00</u>

FURNITURE AND EQUIPMENT

1. For the purchase of furniture and equipment	5,000.00
Total for furniture and equipment	<u>P5,000.00</u>

SPECIAL EXPENSES

1. For representation expenses—	
a. The Ambassador at P12,000 for six months only (Jan. 1 to June 30, 1951)	6,000.00
b. The Minister	9,000.00
c. Charge d'Affaires in Rome	3,300.00
Total for representation expenses	<u>P18,300.00</u>

Total for the Philippine Embassy in Madrid, with concurrent jurisdiction over the Philippine Legation in Rome

and the concurrent Philippine Legations
in Paris, The Vatican, Brussels and
and The Hague P297,475.00

SEC. 3. Expenses incurred by the diplomatic offices herein reorganized and established from July first, nineteen hundred and fifty up to thirty days from the date of the promulgation of this Order, the appropriations for which are not continued in this Order, shall be charged against the respective appropriations authorized in Republic Act Numbered Five hundred sixty-three.

SEC. 4. Any officer or employee of the diplomatic offices herein reorganized and established whose position is abolished by virtue of this Order shall receive a gratuity in lump sum equivalent to one month salary for every year of continuous and satisfactory service rendered but not exceeding twelve months, on the basis of the last salary received: *Provided*, That any official or employee who has rendered less than one year of service shall be entitled to a gratuity equivalent to one-half of one month's salary: *And provided, further*, That in case of subsequent reinstatement in the government service or in any government-owned or controlled corporation, he shall refund to the National Government the value of the gratuity which he would not yet have received had it been paid to him in monthly installments.

SEC. 5. The travelling expenses of personnel in the aforementioned diplomatic establishments whose positions are abolished or discontinued by this Order and of the immediate dependent members of their families, including expenses for the shipment of their household effects, shall be charged against the appropriation authorized in Republic Act Numbered Five hundred seventy-five, or from any saving in the appropriations for the Department of Foreign Affairs.

SEC. 6. All Acts, Executive Orders, Administrative Orders, Proclamations, and Department (of Foreign Affairs) Orders or parts thereof, inconsistent with any provision of this Order are hereby repealed or modified accordingly: *Provided*, That the general provisions of Republic Act Numbered Five hundred sixty-three and other Acts or Orders applicable to the Foreign Service of the Republic of the Philippines relative to the expenditure and disbursement of appropriations shall be applicable to the appropriations herein re-allotted.

SEC. 7. If any provision of this Order shall be held invalid, the other provisions not affected thereby shall remain in full force and effect.

SEC. 8. This Order shall take effect as of July first, nineteen hundred and fifty, except as otherwise stated.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 398

REORGANIZING THE DEPORTATION BOARD

For the purpose of conducting investigations of undesirable aliens residing in the Philippines in the manner prescribed in section 69 of the Revised Administrative Code, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby reorganize the Deportation Board to be composed of—

A Judge of First Instance to be designated by the Secretary of Justice	Chairman
A ranking officer of the Department of Foreign Affairs to be designated by the Secretary of Foreign Affairs	Member
The Commissioner of Immigration	Member
The City Fiscal of Manila	Member
The Judge Advocate General of the Armed Forces of the Philippines	Member

1. The Board shall conduct all investigations in accordance with the following rules and regulations:

(a) The Deportation Board, *motu proprio* or upon complaint of any person, is authorized to conduct investigations in the manner prescribed in section 69 of the Revised Administrative Code to determine whether a subject of a foreign power residing in the Philippines is an undesirable alien or not, and thereafter to recommend to the President of the Philippines the deportation of such alien.

(b) The Deportation Board, *motu proprio* or upon the filing of the formal charges by the Special Prosecutor of the Board, shall issue the warrant of arrest against the alien or aliens complained of.

(c) Any respondent may file a bond with the Deportation Board in such amount and containing such conditions as the Chairman of the Board may approve and prescribe: *Provided, however,* That if at any stage of the proceedings it appears to the Board that there is strong evidence against the respondent or there is strong probability of his escaping or evading the proceedings of the Board, it may order his arrest and commitment.

(d) Every person complained against before the Deportation Board shall be informed of the charge or charges against him and shall be allowed not less than three days from notice

thereof for the preparation of his defense. He shall have the right to be heard by himself or counsel, to produce witnesses in his own behalf and to cross-examine the opposing witnesses.

(e) The proceedings before the Board shall be reduced to writing, a full record of the proceedings shall be kept in all cases and shall include a statement of the findings and conclusions of the Board signed by the members thereof. A majority of the members shall constitute a quorum for the transaction of business and a vote of three of them shall be necessary to arrive at a decision: *Provided, however,* That the Board may designate one of its members or any other competent person to receive evidence and submit a report to the Board, on the basis of which it shall make its own findings of fact. Any dissent from the majority opinion shall also be reduced to writing and filed with the records of the proceedings.

(f) The investigation of any case shall be finished within fifteen days, unless extended by the President. The findings and recommendations of the Deportation Board, with a full record of the proceedings, shall be transmitted to the Office of the President within ten days after the termination of the investigation. Final order of deportation shall be issued by the President of the Philippines.

2. The assistance of all law enforcement agencies and offices of the Government should be made available to the Deportation Board at the request of the Chairman thereof.

3. The Deportation Board shall issue such rules and regulations as may be necessary to carry into effect the provisions of this Order.

4. Executive Order No. 37, dated January 4, 1947, Executive Order No. 69, dated July 29, 1947, and all other Orders inconsistent herewith are hereby revoked.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 399

UNIFORM CHARTER FOR GOVERNMENT
CORPORATIONS

Pursuant to the powers vested in me by Republic Act Numbered Four hundred and twenty-two, otherwise known as the Reorganization Act of 1950, I, Elpidio Quirino,

President of the Philippines, do hereby promulgate this Uniform Government Corporate Charter.

DURATION, PURPOSES AND POWERS OF CORPORATIONS

SECTION 1. *Duration*.—All government owned or controlled corporations shall exist for a period of twenty-five years from the effectivity of this Executive Order.

SEC. 2. *Principal Office*.—All government owned or controlled corporations shall have their main offices in the City of Manila or in Quezon City, but may establish branches and agencies in other places, within and outside the Philippines, as may be necessary for the proper conduct of their business.

SEC. 3. *Purposes and Specific Powers*.—The purposes and specific powers of existing corporations that are subject to this Charter are those enumerated in *Annex A* hereof.

SEC. 4. *General Powers*.—All corporations shall have the following general powers:

(a) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the Corporation; and

(b) Generally, to exercise all the powers of a corporation under the Corporation Law in so far as they are not inconsistent with the provisions of this Order.

CAPITAL AND MEETING OF THE STOCKHOLDERS

SEC. 5. *Capitalization*.—The authorized capital of government corporations are specified after their respective names in *Annex A* hereof. The Government of the Republic of the Philippines shall not be liable for any debt, liability, obligation or damage that might be contracted, incurred or caused by the corporation.

SEC. 6. *Meeting of the Stockholders*.—Where all the shares of stock of the corporation are entirely owned by the government, the corporation shall not hold a general meeting of stockholders. In lieu thereof, the General Manager of the corporation shall submit an annual report to the President of the Philippines, through the Administration of Economic Coordination.

GOVERNING BODY

SEC. 7. *Composition and appointment*.—The corporate powers of the corporation shall be vested in and exercised by a Board of Directors of not more than seven nor less than five members as may be fixed by the President of the Philippines, consisting of a chairman and six or four members, appointed by the President of the Philippines with the consent of the Commission on Appointments. Directors need not be stockholders of the corporation. The said members shall serve as designated by the President in their appointments for terms of one, two, and three years, respectively, from the date they qualify and

assume office; but their successors shall be appointed for terms of three years, except that any persons chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds. For actual attendance at meetings, each director shall receive a per diem of twenty-five (P25) pesos.

SEC. 8. *Powers and Duties of the Board of Directors.*—The Board of Directors shall have the following powers and duties:

(a) To prescribe, amend and repeal, with the approval of the Administrator of Economic Coordination, by-laws, rules and regulations governing the manner in which the general business of the corporation may be exercised, including provisions for the formation of such committee or committees as the Board of Directors may deem necessary to facilitate its business.

(b) To appoint and fix the compensation of the General Manager, subject to the approval of the President of the Philippines, and to appoint and fix the compensation of the other officers of the Corporation, with the approval of the Administrator of Economic Coordination. The Board by a majority vote of all the members, may for cause, and with the approval of the President of the Philippines, suspend and/or remove the General Manager.

(c) To approve, subject to the final action of the Administrator of Economic Coordination, the annual and/or such supplemental budgets of the corporation which may be submitted to it by the General Manager from time to time.

SEC. 9. *Suspension and Removal of Directors.*—Any member of the Board of Directors may be suspended or removed by the President of the Philippines, solely or upon the recommendation of the Administration of Economic Coordination.

SEC. 10. *Prohibition for Board Members.*—No chairman or member of the Board of Directors of a corporation shall at the same time serve in the corporation in any capacity whatsoever other than as chairman or member thereof, unless otherwise authorized by the President.

MANAGEMENT

SEC. 11. *Managing Head.*—The management of the corporation shall be vested in the General Manager.

SEC. 12. *Powers and Duties of the General Manager.*—The General Manager shall have the following powers and duties:

(a) To direct and manage the affairs and business of the Corporation, on behalf of the Board of Directors, and subject to its control and supervision;

(b) To sit in all meetings of the Board of Directors, and participate in its deliberations, but without the right to vote;

(c) To submit within sixty days after the close of each fiscal year an annual report, through the Board of Directors, to the Administrator of Economic Coordination;

(d) To appoint and fix the number and salaries, with the approval of the Board of Directors, of such subordinate personnel

as may be necessary for the proper discharge of the duties and functions of the Corporation, and, with the approval of the Board, to remove, suspend, or otherwise discipline, for cause, any subordinate employee of the Corporation; and

(e) To perform such other duties as may be assigned to him by the Board of Directors from time to time.

APPOINTMENTS AND PROMOTIONS

SEC. 13. *Basis*.—In the appointment and promotion of officers and employees, merit and efficiency shall serve as basis, and no political test or qualification shall be prescribed and considered for such appointments or promotions. Any person appointed by the Board or by the General Manager, in violation of the above prohibition, shall be removed from office by the Administrator of Economic Coordination.

SEC. 14. *Application of Civil Service Law and Regulations*.—All officers and employees of the corporation shall be subject to the Civil Service Law, rules and regulations, except those whose positions may, upon recommendation of the Board of Directors and the Administrator of Economic Coordination, be declared by the President of the Philippines as policy-determining, primarily confidential or technical in nature.

AUDIT

SEC. 15. *Personnel*.—The Auditor General shall appoint a representative who shall be the Auditor of the corporation, and the necessary personnel to assist said representative in the performance of his duties. The number and salaries of the Auditor and said personnel shall be determined by the Auditor General, subject to appropriation by the Board of Directors. In case of disagreement, the matter should be submitted to the President of the Philippines whose decision shall be final. Said salaries and all other expenses of maintaining the Auditor's office shall be paid by the corporation.

SEC. 16. *Report*.—The financial transactions of the corporation shall be audited in accordance with law, administrative regulations, and the principles and procedures applicable to commercial corporate transactions. A report of audit for each fiscal year shall be submitted, within sixty days after the close of the fiscal year, by the representative of the Auditor General, through the latter, to the Board of Directors of the corporation, and copies thereof shall be furnished the President of the Philippines, the Administrator of Economic Coordination and the Presiding Officers of the two Houses of Congress. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement and surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds; and such comments and infor-

mation as may be necessary, together with such recommendations with respect thereto as may be advisable, including a report of any impairment of capital noted in the audit. The report shall also show specifically any program, expenditures, or other financial transaction or undertaking observed in the course of audit, which, in the opinion of the Auditor, has been carried on or made without authority of law.

DISSOLUTION AND LIQUIDATION

SEC. 17. *Voluntary Dissolution*.—Whenever the Administrator of Economic Coordination believes that a government corporation has accomplished its purposes, or is no longer necessary to carry out the objectives for which it was created, or when its main purpose cannot be accomplished, resulting in financial losses, he may recommend to the President of the Philippines the dissolution thereof even if its terms as provided in this Uniform Charter has not yet expired, and the President of the Philippines may, by executive order, effect such dissolution.

SEC. 18. *Liquidation*.—Every government owned or controlled corporation which is voluntarily dissolved as provided for in the next preceding paragraph, or whose term or existence has expired in accordance with the provisions of this Uniform Charter, shall nevertheless, be continued as a body corporate for three years after the time of its dissolution for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its properties, but not for the purpose of continuing the business for which it was established. In order to carry out this liquidation, upon the dissolution of a government corporation, a Board of Liquidators shall be appointed by the President to take charge of winding up the affairs of the corporation and effecting its liquidation, subject to the supervision and control of the Administrator of Economic Coordination.

GENERAL PROVISIONS

SEC. 19. *Applicability to Former Charters*.—The charters of the Government Service Insurance System, Metropolitan Water District and the National Power Corporation shall remain in full force and effect insofar as they are compatible with the provisions of this Uniform Charter.

SEC. 20. *Applicability of the Corporation Law*.—The provisions of the Corporation Law which are not inconsistent with the provisions of this Uniform Government Corporate Charter, shall be applicable to government owned or controlled corporations.

SEC. 21. *Applicability to New Corporations*.—All corporations hereafter organized by authority of the President for the economic development of the country, except

those vested with governmental and regulatory powers, shall be chartered under the provisions of this Uniform Corporate Charter, unless otherwise provided by the President.

SEC. 22. *Repeal or Modification.*—All Acts, Executive Orders, Administrative Orders, and Proclamations or parts thereof inconsistent with any of the provisions of this Order are hereby repealed or modified accordingly.

SEC. 23. *Constitutionality.*—If any provision of this Order shall be held invalid, the other provisions shall not thereby be affected.

SEC. 24. *Effectivity.*—The provisions of this Executive Order shall take effect immediately upon promulgation hereof.

Done in the City of Manila, this 5th day of January in the year of Our Lord, nineteen hundred and fifty-one and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

UNIFORM GOVERNMENT CORPORATE CHARTER

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ANNEX A

CAPITAL, SPECIFIC PURPOSES AND SPECIAL POWERS OF GOVERNMENT
OWNED OR CONTROLLED CORPORATIONS1. *Cebu Portland Cement Company (CEPOC)*

Authorized capital—P10,000,000

Purposes:

(a) To engage in the manufacture, development, exploitation and sale of cement, marble, and all other kinds and classes of building materials, and the processing or manufacture of materials for any industrial or commercial purposes; and

(b) To locate, purchase, lease and otherwise acquire mining claims containing lime, limestone, marble, granite, and all other building stones and clay and other building materials, in the Philippines or foreign countries; to quarry, manufacture and prepare for market and for all building and other purposes all the above materials and stones; to manufacture, merchandise, trade and deal in terrazo, artificial stones, and all other artificial building products; to import, export, buy, sell, manufacture, merchandise, trade and deal in the stones and materials above-mentioned.

2. *Government Service Insurance System (GSIS)*

Authorized capital—P4,200,000

Purpose:

To promote the efficiency and welfare of the employees of the Government of the Philippines, its subdivisions, agencies and instrumentalities by means of compulsory and/or optional life insurance as provided for under Commonwealth Act No. 186, as amended.

3. *Insular Sugar Refining Corporation (INSUREFCO)*

Authorized capital—P5,000,000

Purpose:

To manufacture, refine or otherwise produce, purchase, sell and deal in, either as principal or agent, for present or future delivery, sugar, mollasses, pulp, paper, paper bags, glucose, syrup and such other products and by-products as are identical thereto.

4. *Land Settlement and Development Corporation (LASEDECO)*

Authorized capital:

The LASEDECO shall have as its capital the net worth of the National Land Settlement Administration, and the Rice and Corn Production Administration and the Machinery and Equipment Department of the National Development Company, as determined in accordance with section 13 of Executive Order No. 355, including the appraised value to be determined by the Secretary of Agriculture and Natural Resources of lands ceded to it pursuant to section 14 of Executive Order No. 355, and such appropriations as may be authorized by law.

Purposes:

(a) To facilitate the acquisition, settlement and cultivation of agricultural lands;

(b) To afford opportunity to own farms to tenant farmers and small farmers from congested areas, to graduates of agricultural schools and colleges, to trainees who have completed the prescribed military training, to veterans and members of guerrilla organizations, and to other persons as may be determined by the Board of Directors with the approval of the Administrator of Economic Coordination.

(c) To encourage migration to sparsely populated regions, and facilitate the amalgamation of the people in different sections of the Philippines;

(d) To acquire by grant from the Republic of the Philippines unrestricted areas of public agricultural lands in order to carry out its objectives; to survey, subdivide and set aside lots or areas of such lands for farming, townsites, roads, parks, government centers, recreational centers and other public and civic improvements; and to dispose of far lands and townsite lots to persons qualified and to the extent of areas authorized under the Constitution and the Public Land Act, subject to such other qualifications, and to prices, terms and conditions as may be prescribed by the Board of Directors, with the approval of the Administrator of Economic Coordination, the proceeds from disposition of the same to accrue to the Corporation: *Provided however*, That within a period of ten years after the final grant, the farm lands, improvements or crops and townsite lots and improvements thereof shall not, except by inheritance, be encumbered, except to credit agencies duly authorized therefor by the Board of Directors nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of the said period.

(e) To establish and operate credit agencies, electric light and water plants, water supplies, irrigation systems, cooperatives to engage in the buying and selling of commodities, and other services or conveniences for the well-being of the settlers;

(f) To encourage mechanized farming; to operate tractors and agricultural machinery pools; and to maintain training centers for the operation and repair of agricultural machinery, tractors and the like;

(g) To assist in the establishment of agricultural and other vocational schools within the areas under its territorial jurisdiction, and to allocate definite portions of farm lands and townsite lots with a view to enabling students successfully finishing courses prescribed in said agricultural and vocational schools to eventually acquire title thereto;

(h) To acquire and administer, in accordance with the foregoing objectives, all surveyed portions of the public agricultural lands heretofore transferred or reserved for the use and operation of the National Land Settlement Administration and the Rice and Corn Production Administration of the National Development Company, and/or of those which may hereafter be transferred by the President of the Philippines to the LASEDECO, and over which the President of the Philippines may issue patents and or deeds transferring titles to such lands for the said corporation in accordance with the provisions of the Public Land Act and such rules and regulations as may be promulgated to facilitate the transfer of titles to the said corporation.

5. Manila Hotel Company (MHC)

Authorized capital—P4,000,000

Purpose:

To purchase, lease, or otherwise acquire hotel properties and interests in hotels or hotel properties; to buy and sell all or part of the capital stock of hotel companies, build or contract for the building of hotels, sell, lease or otherwise dispose of hotels and hotel properties, interests in hotels or hotel properties and generally to engage

in the business of operating, conducting and managing hotels and hotel properties.

6. *Manila Railroad Company (MRRCO)*

Authorized capital—P50,000,000

Purposes:

(a) To own or operate railroads, tramways, and other kinds of land transportation, vessels and pipe lines, for the purpose of transporting for consideration, passengers, mail and property between any points in the Philippines; and

(b) As an auxiliary to its main purpose, to own and/or operate powerhouse, hotels, restaurants, terminals, warehouses, timber concessions, coal mines, iron mines and other mineral properties and to manufacture rolling stock, equipment, tools and other appliances; to construct and operate in connection with its railroad lines toll viaducts, toll bridges and toll tunnels.

To carry out the purposes above-mentioned, it shall have the special power to acquire by condemnation proceedings rights of way, real property or interest or easements therein as it may require for its purposes.

7. *Metropolitan Water District (MWD)*

Authorized capital—P10,000,000

Purposes:

To furnish adequate water supply and sewerage service in the City of Manila, Pasay City and the nearby and contiguous municipalities; and to this end—

(a) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes;

(b) To purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collection of rents therefor;

(c) To construct, maintain and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the District, and to charge and collect such sums for construction and rates for this service as may be determined by the Board to be equitable and just;

(d) To construct all such storm drains as may be needed in the City of Manila and requested by the City, and to maintain and operate all existing drains, the City of Manila to appropriate sufficient funds for this purpose; *Provided, however,* That should the National Government set aside any sum or sums for the improvement of the drainage system of the City of Manila, such sum or sums shall constitute a special fund of the District to be disbursed subject to the approval of the Secretary of Public Works and Communications;

(e) To construct works across, or otherwise, any stream, watercourse, canal, ditch flume, street, avenue, highway or railways as the location of said works may require, provided such works are constructed in such manner as to afford security for life and property, and provided that the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored to their former state as near as may be, in a manner not to have impaired unnecessarily their usefulness. Every person or entity whose right of way is crossed or intersected by said works shall not obstruct the forming of such crossing or intersection and shall grant the District the proper authority for the execution of such work. The District is hereby given the right of way to

locate, construct and maintain such works over and through any of the lands which are now or may be the property of the Government of the Philippines or any of its branches and political subdivisions;

(f) To enact such regulations as may be necessary for the sanitary protection of the watershed and the reservoirs and water mains, and for the proper operation of the sanitary sewers, subject to the approval of the Bureau of Health, to enact regulations for the protection of the water and sewer service and of the light service, as soon as established, and to fix penalties for violations of the regulations enacted under this sub-section which shall not in any case exceed two hundred pesos fine or six months imprisonment, or both, in the discretion of the court;

(g) To process the waste materials obtained in the sewers for fertilizing purposes;

(h) To exercise the right of eminent domain to achieve the purposes for which the corporation is created.

8. *National Development Company (NDC)*

Authorized capital—P50,000,000

Purposes:

(a) To engage in commercial, industrial, mining, agricultural and other enterprises which may be necessary or contributory to the economic development of the country and important in the public interest;

(b) To hold public agricultural lands and mineral lands in excess of the area permitted to private corporations;

(c) To purchase or pledge or otherwise dispose of the shares of capital stock of, or any bond, security, or other evidence of indebtedness created by any other corporation or corporations, co-partnerships of this or any other country;

(d) To finance industrial plants and factories for the manufacture or processing of Philippine products or for the operation of public services necessary or incidental for the promotion of the domestic and foreign trade of the Philippines either directly, thru a subsidiary or in partnership with private interests holding a majority or minority interest, or by extending financial help to private interests by the purchase of bonds or by guaranteeing bonds issued by private parties.

(e) To organize subsidiary companies, provided the National Development Company shall have control over them; and

(f) To exercise the power of eminent domain, for the construction or operation of public utilities or services. This power is granted to the National Development Company and to its subsidiaries.

9. *National Power Corporation (NPC)*

No authorized capital.

Purposes:

(a) To conduct investigations and surveys for the development and control of rivers and waterfalls in any part of the Philippines and to develop water power by controlling rivers and waterfalls;

(b) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of due compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its work or any part thereof;

(c) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, main, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate and improve gas, oil, or steam engines, and/or other prime movers, generators and other machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the use of the Government and the general public; to sell electric power and to fix the rates and provide for the collection of the charges for any service rendered; provided, that the rates of charges shall not be subject to revision by the Public Service Commission:

(d) To construct works across, or otherwise, any stream, watercourse, canal, ditch flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require; provided that said works be constructed in such a manner as not to endanger life or property; provided further that the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as may be to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way is crossed or intersected by said works shall not obstruct any such crossings or intersections and shall grant the Board or its representatives, the proper authority for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct and maintain such works over throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in the lawful performance or prosecution of its business and purposes; provided that the owner of such private property shall be indemnified for any actual damage caused thereby;

(e) To construct flood control works in the main river systems of the Philippines in connection with the construction of hydroelectric projects with funds that may be appropriated from time to time for such purpose by the Philippine Congress.

(f) To own and operate heavy power consuming industries such as fertilizer plants of any kind and nature and electric iron and steel plants, and fuel producing industries such as coal mining, fuel oil refineries, and others.

(g) To exercise the right of eminent domain to achieve the purpose for which the Corporation is created.

(h) Subject to all existing rights, all unappropriated public waters which may be used and developed for water power purposes shall be, and hereby are reserved from appropriation by any person, firm or corporation under any general or special law relating to the appropriation of public waters, for the use of the National Power Corporation: *Provided, however,* That upon recommendation of the Secretary of Public Works and Communications, concurred in by National Power Board, the President may from time to time release from this reservation any unappropriated public waters which may not be needed for the use of the National Power Corporation.

Any person or persons who shall willfully or maliciously destroy, injure or interfere with any canal, raceway, ditch, lock, pier, inlet crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipe, culvert, post, abutment, conductor, cable-wire, insulator, wire, benchmark, monument, or other work, appliance, machinery, building or property of the Corporation, or who shall willfully or maliciously do any act which shall injuriously affect the quantity or quality of the water or electrical energy of the Corporation or the supply, trans-

mission, measurement or regulation thereof, or who shall maliciously interfere with any person engaged in the discharge of duties connected therewith, shall be guilty of a felony and punished with a fine not to exceed five thousand pesos or with imprisonment for a term not to exceed two years, or both such fine and imprisonment, at the discretion of the Court, and any injured party shall have the right to recover all damages suffered and cost of suit in a separate civil action in any court of competent jurisdiction.

10. *National Shipyards and Steel Corporation (NASSCO)*

Authorized capital—

Purposes:

(a) To engage in the building and/or repair of ships, vessels, launches, tugs, barges, dredges, ferries, scows, lighters and other floating or marine craft and equipment;

(b) To purchase and/or otherwise acquire, own, control, operate, maintain, build and/or repair slipways, floating and dry docks;

(c) To undertake the fabrication, manufacture and/or repair of light and heavy machinery, equipment, structures, implements, tools, hardware and other articles;

(d) To acquire, construct and operate iron and steel mills, ferrous and non-ferrous foundries, furnaces, smelters and other mills and plants for light and heavy industries;

(e) To acquire the right-of-way to locate, construct and maintain works and/or appurtenances over and throughout the lands and waters owned by the Republic of the Philippines, or any of its branches or political subdivisions; and to exercise the right of eminent domain for the purposes of this Order in the manner provided by law for instituting condemnation proceedings.

11. *People's Homesite and Housing Corporation (PHHC)*

Authorized capital—P15,000,000

Purposes:

(a) To acquire, develop, improve, subdivide, lease and sell lands and construct, lease and sell buildings or any interest therein in the cities and populous towns of the Philippines, with the object of providing decent housing for those who may be found unable otherwise to provide themselves therewith;

(b) To promote the physical, social, and economic betterment of the inhabitants of the cities and populous towns of the Philippines, by eliminating therefrom slums and dwelling places which are unhygienic or unsanitary and by providing homes at low cost to replace those which may be so eliminated;

(c) To provide community and institutional housing for destitute individuals and families and for paupers;

(d) To acquire large estate under such terms and conditions as may be advantageous to the interest, for their subdivision and resale to bonafide occupants; and

(e) To exercise the right of eminent domain for the purposes for which the corporation was organized.

12. *Philippine Charity Sweepstakes Office (PCSO)*

No authorized capital.

Purposes:

(a) To take charge of the holding of charity sweepstakes, promulgate rules and regulations for the holding of the same, decide on the amount, form and contents, time and manner of printing and the prices of the sweepstakes tickets, as well as the number of tickets allowed free for, or commission given to, authorized re-sellers, fix the number and amount of prizes, the manner in which

they are to be awarded and the way and time of their payments, fix the date of sale of the tickets, designate the dates, and places in the Philippines or abroad where the sweepstakes races are to be held, and establish such other regulations as are necessary or convenient for the proper realization for its purposes; and

(b) To distribute and apply the proceeds of the sale of tickets in accordance with law.

13. *Price Stabilization Corporation (PRISCO)*

Authorized capital—P30,000,000

Purposes:

(a) To undertake the prevention, locally or generally of scarcity, monopolization, hoarding, injurious speculation, manipulation, private control, and profiteering, affecting the supply, distribution, and movement of all articles, goods, or commodities or prime necessity, which may be placed under economic control by the Board of Directors with the approval of the Administrator of Economic Coordination, to safeguard the public interest; and, if and when necessary, in order to accomplish the foregoing objectives, to commandeer, requisition and ration said articles, goods or commodities, and to exercise such other powers as may be provided by law;

(b) To aid in the promotion of the rice and corn industry of the Philippines through the maintenance of stable prices for said commodities, and to study and execute such measures as may be necessary and convenient to protect the interest of both the producers and the consumers thereof;

(c) To foster, encourage and promote the cooperative movement and mutual aid enterprises in the Philippines as dynamic factors in the country's economic rehabilitation and development, and to assist Filipino retailers and businessmen, such as by supplying them with merchantable goods at prices that will enable them to compete successfully in the open market;

(d) To study, formulate and carry out measures for the promotion of home industries and for accelerating the rehabilitation and reconstruction of Philippines agriculture, industry and trade; and

(e) To act as the agency and representative of the Republic of the Philippines in carrying out barter or other international economic agreements with other countries.

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 400

TRANSFERRING THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL TO THE OFFICE OF THE SOLICITOR GENERAL.

Pursuant to the powers vested in me by Republic Act Numbered Four hundred twenty-two, I, Elpidio Quirino, President of the Philippines, do hereby order:

The Office of the Government Corporate Counsel, together with its personnel, properties, funds, records and accounts, is hereby transferred to the Office of the Solicitor General. The powers, duties, functions and activities of the Government Corporate Counsel shall hereafter be as-

sumed and exercised by the Solicitor General who, in addition to his salary provided by law, is hereby given additional compensation of three thousand pesos per annum for such work. The operation expenses of the Corporate Counsel and his personnel shall continue to be paid as heretofore from contributions made *pro rata* by the corporations and agencies of the Government in such proportion as the Administrator of Economic Coordination may determine.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 401

ALLOWING THE CHAIRMEN AND MEMBERS OF THE INTEGRITY BOARD, THE PHILIPPINE INFORMATION COUNCIL, AND THE BOARD OF LIQUIDATORS CREATED UNDER EXECUTIVE ORDER NO. 318, DATED MAY 25, 1950, EXECUTIVE ORDER NO. 348, DATED SEPTEMBER 29, 1950, AS AMENDED, AND EXECUTIVE ORDER NO. 372, DATED NOVEMBER 24, 1950, RESPECTIVELY, TO RECEIVE PER DIEM.

Pursuant to the powers vested in me by Republic Act Numbered Four hundred twenty-two, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The Chairmen and Members of the Integrity Board, the Philippine Information Council, and the Board of Liquidators created under Executive Order No. 318, dated May 25, 1950, Executive Order No. 348, dated September 29, 1950, as amended, and Executive Order No. 372, dated November 24, 1950, respectively, shall each receive a per diem of ₱25 for every board meeting attended, irrespective of whether or not they are officers and/or employees of the Government.

SEC. 2. This Order shall take effect as of the date the Chairmen and/or Members of the above-named Boards assumed their respective office.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 402

AMENDING EXECUTIVE ORDER NUMBERED THREE
HUNDRED AND FORTY-THREE AND FOR OTHER
PURPOSES.

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 1 of Executive Order No. 343, dated August 14, 1950, is hereby amended by increasing and setting up new ceiling prices for first class waterclosets, lavatories, and second class kitchen sinks, as follows:

CONSTRUCTION MATERIALS (IMPORTED)

PLUMBING MATERIALS AND SUPPLIES

Commodity	Unit	Wholesale price	Retail ceiling price
<i>Waterclosets:</i>			
First Class A—			
K-3705—"Kohler" F-2100—"Standard" S-42—"Richmond" Closed Couple Reverse Trap, White V. C. Complete w/White Seat Cover & C. P. Supply Pipe	Set	P117.68	P130.02
First Class B—			
K-3715—"Kohler" F-2115—"Standard" Closed Coupled Washdown White V. C. Complete w/White Seat & Cover & 3/8" C. P. Supply Pipe	Set	111.86	123.59

PLUMBING MATERIALS AND SUPPLIES—*Continued*

Commodity	Unit	Wholesale price	Retail ceiling price
<i>Lavatories:</i>			
Special Class:			
F-1158 ST "Standard" K-1600 A "Kohler" 22" x 18" White VC complete w/C. P. Combination Supply & Pop-up drain fitting & 1-1/4" C. P. P-Trap & C. P. Legs with Towel Bar	Set	P180.95	P199.93
First Class:			
Q-3865—"Standard" K-2830— "Kohler" 20" x 18" Cast Iron White Enamel Complete w/C. P. Compression Lavatory Faucet & 1-1/4" S. N. P-Trap with P. O. Plug & Chain & Rubber Stopper	Set	72.29	79.87
First Class:			
P-4205—"Standard" K-2880— "Kohler" 17" x 19" C. I. White Enamel Complete w/C. P. Com- pression Lavatory Faucet 1-1/4" S. N. P-Trap w/P. O. Plug & Chain & Rubber Stopper	Set	71.86	79.40
<i>Kitchen Sinks:</i>			
Second Class:			
Enamel Iron AR Sink w/K-9107			
Sizes: 24" x 16"	Set	46.10	50.94
Do 30" x 18"	Set	52.94	58.49

SEC. 2. The ceiling prices fixed in this Order include the 7 per cent sales tax and 1 per cent municipal tax.

SEC. 3. This Order shall take effect immediately.

Done in the City of Manila, this 18th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 403

AMENDING EXECUTIVE ORDER NUMBERED THREE
HUNDRED AND THIRTY-ONE, EXECUTIVE
ORDER NUMBERED THREE HUNDRED AND

FORTY-THREE, EXECUTIVE ORDER NUMBERED THREE HUNDRED AND FIFTY-THREE, AND EXECUTIVE ORDER NUMBERED THREE HUNDRED AND SEVENTY AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled, "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 1 of Executive Order No. 331, dated July 7, 1950, is hereby amended by increasing and setting up new ceiling prices for Roasted Ground Coffee, Locally Prepared (with Imported Coffee Beans), and Condensed Milk, as follows:

FOODSTUFF (LOCAL)

Commodity	Unit	Producer's price	Wholesale price	Retail ceiling price
BEVERAGE				
Roasted ground coffee, locally prepared (with imported coffee beans) packed in paper bag.....	1-lb.	P1.74	P1.90	P2.14

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's price	Wholesale price	Retail ceiling price
CONDENSED MILK				
	48/14-oz.	P26.90/cs.	P28.18/cs.	P0.68/tin
	144/4-oz.	27.57/cs.	29.91/cs.	0.23/tin

SEC. 2. Section 1 of Executive Order No. 343, dated August 14, 1950, is hereby amended by increasing and setting up new ceiling prices for Roasted Ground Coffee, Locally Prepared (with Imported Coffee Beans) and Raw Coffee Beans, as follows:

FOODSTUFF (LOCAL)

Commodity	Unit	Producer's price	Wholesale price	Retail ceiling price
BEVERAGE				
Roasted ground coffee, locally prepared (with imported coffee beans) packed in tin:				
Brands: Rooster, Sta. Claus, Old Chof, Hamilton, La Estrella, Washington, Elefante, Alca, King's and all other brands	1-lb	P2.38	P2.60	P2.90

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's price	Wholesale price	Retail ceiling price
OTHER PRODUCT				
Brazil coffee (raw)				
beans 2/3's	Bag/132#	P169.62/Bag	P183.98/Bag	P3.42/kilo

SEC. 3. Section 1 of Executive Order No. 353, dated October 6, 1950, is hereby amended by increasing and setting up new ceiling prices for Peter's Cocoa, as follows:

FOODSTUFF (IMPORTED)

BEVERAGE

Peter's Cocoa	24/8-oz.	P17.98/cs.	P19.51/cs.	P0.91/tin
Peter's Cocoa	48/4-oz.	19.62/cs.	21.29/cs.	0.50/tin

SEC. 4. Section 1 of Executive Order No. 370, dated November 13, 1950, is hereby amended by increasing and setting up new ceiling price for Brazil Coffee Beans, as follows:

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's price	Wholesale price	Retail ceiling price
OTHER PRODUCT				
Brazil coffee (raw)				
beans 7/8's	Bag/122#	P154.20/Bag	P167.26/Bag	P3.11/kilo

SEC. 5. The ceiling prices fixed in this Order include the 7 per cent sales tax and 1 per cent municipal tax.

SEC. 6. This Order shall take effect immediately.

Done in the City of Manila, this 18th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 404

**FIXING THE CEILING PRICES OF COMMODITIES
AND FOR OTHER PURPOSES**

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of com-

modities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines do hereby order:

SECTION 1. The following essential commodities shall not be sold at more than the maximum selling prices for Producers or Importers, Wholesalers and Retailers set opposite each:

PAPER AND PAPER PRODUCTS (LOCAL)

Commodity	Unit	Producer's or importer's price	Wholesale price	Retail ceiling price
LOCALLY PRODUCED PAPER				
White Bond Paper:				
Specifications:				
22" x 34" -32#	Ream/500	P13.12	P13.96	P15.70
8-1/2" x 11"				
-Sub. 16.....	Ream/500	2.04	2.21	2.47
8" x 10-1/2"				
-Sub. 16.....	Ream/500	2.04	2.21	2.47
8-1/2" x 13"				
-Sub. 16.....	Ream/500	2.40	2.60	2.91
8" x 13" -Sub.				
16	Ream/500	2.40	2.60	2.91

FOODSTUFF (IMPORTED)

MILK

Golden State powdered skimmed milk	Drum/225#	P96.47	P104.65	P116.90
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OTHER PRODUCT

Hawaiian Coffee (raw) beans	Bag/100#	P144.53/Bag	P156.78/Bag	P3.85/kilo
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SEC. 2. Any commodity not included in previous Executive Order fixing ceiling prices and issued by authority of Republic Act No. 509, or in this Order, the size and specification of which are the same as those of the foregoing, shall have the same ceiling price.

SEC. 3. The ceiling prices fixed in this Order include the 7 per cent sales tax and 1 per cent municipal tax.

SEC. 4. This Order shall take effect five days from the date hereof.

Done in the City of Manila, this 18th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 405

IMPLEMENTING SECTION 3 OF EXECUTIVE ORDER
NO. 383, DATED DECEMBER 20, 1950, WITH
RESPECT TO THE FINANCES OF THE LOCAL
GOVERNMENTS.

WHEREAS, it is the purpose of the Administration to extend to the local governments as much autonomy as they can assume and exercise under existing laws; and

WHEREAS, the achievement of such local autonomy depends upon the extent of supervision that may be exercised by the authorities concerned;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, pursuant to the powers vested in me by the Constitution and existing laws, do hereby order:

1. In reviewing the budgets of local governments, the Department of Finance shall be guided by the principle that the local governments should be given a large degree of freedom and a wide latitude of discretion in determining for themselves the propriety and wisdom of the expenses that they make and, provided the expenses contemplated are within their financial capacity, the recommendation on the matter of the provincial board, municipal board or city council concerned shall be given due weight by the Department of Finance.

2. It shall be the duty of the Department of Finance to see that the estimates of income are collectible and that the authorized appropriations are within the collectible amount.

3. Until otherwise provided by law, the amount expendable for salaries and wages of provincial and city officials and employees for any fiscal year shall not exceed the following percentages of the ordinary and regular income that accrued to the general fund during the preceding fiscal year, exclusive of all balances carried forward from preceding fiscal years, transfers from other funds, and all receipts from loans, aids or gifts from government or private funds, provided that, upon the recommendation of the Department of Finance, the President may authorize any province or city to exceed such percentages under such conditions as may be prescribed:

First Class A provinces	40%
First Class B provinces	45%
First and Second Class provinces	50%
Third Class provinces	55%
Fourth Class provinces	60%
Fifth Class provinces	70%
Chartered cities (higher than the above percentages)	10%

For the purposes hereof, a city shall be considered as of the same class as a province having the same amount of income. In case the current income of the general fund is less than that which accrued to the same fund during the preceding fiscal year, the percentages herein fixed shall be based on the reduced current fiscal year's income. If the amount spent for salaries and wages in the preceding fiscal year exceeds the limitations herein prescribed, the expenditure of not exceeding said amount for the same purpose during the current fiscal year is hereby authorized, provided that no new positions shall be created nor existing authorized salary rates increased until the total appropriations for salaries and wages shall have been reduced to the amount allowable for expenditure for the purpose as herein fixed.

4. All rates of salaries in the provincial, city and municipal governments not otherwise fixed by law shall be standardized by the President of the Philippines upon the recommendation of the Secretary of Finance.

5. The action of the Department of Finance in its review over the provincial and city budgets shall be communicated directly to the local legislative body, furnishing copy thereof to the Office of the President. In case the local authorities concerned are not satisfied with the action of the Department of Finance, appeal may be taken to the President of the Philippines for final determination.

6. All provisions of Executive and Administrative Orders and Rules and Regulations issued by the Secretaries of Finance and of the Interior inconsistent herewith are hereby repealed.

Done in the City of Manila, this 25th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 406

**FIXING THE CEILING PRICES OF COMMODITY
AND FOR OTHER PURPOSES**

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled, "An Act declaring national policy, authorizing the President of the Philippines for a

limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The following essential commodity shall not be sold at more than the maximum selling prices for importers, wholesalers and retailers set opposite each:

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
CANNED FISH:				
Sardines in Tomato Sauce Oval—				
Portola brand.....	48/15-oz.	P20.45/cs.	P22.18/cs.	P0.52/tin
Del Monte.....	24/15-oz.	10.21/cs.	11.08/cs.	0.52/tin
Canadian Sardines in Tomato Sauce Oval				
Bayside brand.....	48/14-oz.	23.01/cs.	24.96/cs.	0.58/tin

SEC. 2. The ceiling prices hereinabove fixed include the 7 per cent sales tax and 1 per cent municipal tax.

SEC. 3. Any commodity not included in any previous Executive Order fixing ceiling prices and issued by authority of Republic Act No. 509, or in this Order, the size and specification of which are the same as those of the foregoing, shall have the same ceiling price.

SEC. 4. This Order shall take effect five days from the date hereof.

Done in the City of Manila, this 31st day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 229

RESERVING FOR SCHOOL SITE PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE BARRIO OF KABATAN, MUNICIPALITY OF MARGOSATUBIG, PROVINCE OF ZAMBOANGA, ISLAND OF MINDANAO.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141 as amended

I hereby withdraw from sale or settlement and reserve for school site purposes, under the administration of the Director of Public Schools, subject to private rights, if any there be, a parcel of the public domain situated in the barrio of Kabatan, municipality of Margosatubig, Province of Zamboanga, Island of Mindanao, and more particularly described in the Bureau of Lands plan PSU-98288, to wit;

"Psu-9888

(The Provincial Government of Zamboanga)

(Kabataan Settlement Farm School Site)

A parcel of land (as shown on plan Psu-98288, G.L.R.O. record No. 54020), situated in the barrio of Kabatan, municipality of Margosatubig, Province of Zamboanga, Island of Mindanao. Bounded on the N., E., and S., by public lands and on the W., by properties of Lucila Larracochea and Gui Kuna (Subano). Beginning at a point marked "1" on plan being N. 8° 10' E., 4,245.02 m. from C. & G.S. Station Low, Zamboanga, thence N. 3° 50' E., 115.36 m. to point 2; thence N. 0° 18' E., 400.01 m. to point 3; thence N. 84° 48' E., 394.44 m. to point 4; thence S. 7° 34' W., 143.45 m. to point 5; thence S. 15° 34' W., 197.15 m. to point 6; thence S. 22° 30' W., 315.03 m. to point 7; thence N. 82° 33' W., 291.24 m. to point 8; thence N. 78° 00' W., 166.20 m. to the point of beginning containing an area of 211,866 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 4 and 5 by G.S.I. on trees; and the rest by P.L.S. Cylindrical Concrete Monument, bearing true, declination 2° 20' E., date of survey, October 1, 1933, and that of the approval. February 6, 1935."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 230

CALLING THE CONGRESS OF THE PHILIPPINES
TO A SPECIAL SESSION

WHEREAS, the public interest requires that the Congress of the Philippines be convened in special session in order to consider urgent legislative measures;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by the

Constitution, do hereby call the Congress of the Philippines to a special session commencing at four o'clock in the afternoon of the eighth day of January, nineteen hundred and fifty-one, to continue the consideration of measures submitted to the Congress in its last special session and such other measures as may be submitted to carry into effect the Memorandum Agreement signed in Baguio on November 14, 1950, by the President of the Philippines and Mr. William C. Foster, as Representative of the President of the United States, and urgent legislation to insure the financial stability and national security of the Republic of the Philippines.

All persons entitled to sit as members of the Congress of the Philippines are requested to take notice of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 6th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 231

DESIGNATING THE PERIOD FROM JANUARY 15 TO
FEBRUARY 14, 1951, FOR THE NATIONAL FUND
CAMPAIGN OF THE BOY SCOUTS OF THE PHIL-
IPPINES IN PLACES OUTSIDE OF GREATER
MANILA.

WHEREAS, the Boy Scouts of the Philippines, a public corporation created under Commonwealth Act No. 111 for the purpose of promoting the character development and citizenship training of the youth of the land, conducts an annual nation-wide campaign for funds, outside of Greater Manila, with which to realize its avowed aims, including the development and expansion of essential services necessary for the accomplishment of its mission;

WHEREAS, the activities of the organization are national in scope but as a member of the Community Chest it benefits only from contributions derived within the territorial limits of Greater Manila;

WHEREAS, the organization has more than amply demonstrated that it merits and deserves the continued moral encouragement and material support of our people and that there is a great need for it to make the Scouting Program available to the thousands of boys all over the Philippines;

WHEREAS, the Boy Scouts of the Philippines is in need of funds to carry on its annual operations effectively, to intensify its nation-wide training and recruiting program so that great number of boys of Scout age seeking admission into the organization may be enrolled, to plan and promote other programs of activity for the benefit of its member, and to meet its obligations as a member of the International Scout Body; and

WHEREAS, the annual fund campaign, aside from offering us an opportunity to express in a concrete and tangible way or appreciation for the good work being done by the Boy Scouts of the Philippines, affords a means by which we may meet a civic obligation to our country by helping the Youth Organization train and mould every boy in the land to be a clean, upright, responsible, patriotic and God-fearing citizen;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby designate and set aside the period from January 15 to February 14, 1951, for the Boy Scouts of the Philippines to conduct its 1951 Fund Campaign in the provinces, and territories outside of Greater Manila and raise funds for the attainment of its avowed aims and purposes. I call upon all government officials and employees and all citizens and residents of the Philippines outside of Greater Manila to assist in this campaign and to give it their entire support so that the Boy Scouts of the Philippines will be assured of funds that will enable it to carry on its work all over the country and administer its program to as many of our boys of Scout age as possible. I also authorize all national authorities and teachers to accept, for the Boy Scouts of the Philippines, fund-raising responsibilities and urge them to give active support and leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 8th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philipines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 232

DESIGNATING THE PERIOD FROM JANUARY 15 TO
FEBRUARY 14, 1951, AS THE PERIOD FOR THE
NATIONAL CAMPAIGN OF THE GIRL SCOUTS
OF THE PHILIPPINES IN PLACES OUTSIDE OF
GREATER MANILA.

WHEREAS, the Girl Scouts of the Philippines is a public corporation, non-political, non-sectarian, and non-profit making in nature, created by law for the noble and lofty purpose of developing the character of our young girls as a preparation for their responsibilities in the home and to their country;

WHEREAS, although its activities are national in scope, it has to depend largely, as a member of the Community Chest, on contributions solicited within the territorial limits of Greater Manila;

WHEREAS, the Girl Scouts of the Philippines desires to conduct a national campaign for funds with which to maintain, finance and promote its various activities for the attainment of its objectives;

WHEREAS, it would certainly redound to the benefit of the country as a whole and its members in particular, if the Girl Scouting Program were made available to our young girls all over the Islands;

WHEREAS, in due recognition of its achievements in character development and of its priceless services in promoting the moral, spiritual and physical welfare of the Filipino girls, it is our civic obligation to extend to the Girl Scouts of the Philippines not only moral encouragement but also material support in order that it may continue in the arduous and selfless task of training and moulding every girl in our country to be a patriotic, God-fearing, upright, useful, decent and responsible citizen;

WHEREAS, the annual fund campaign affords our people the rare privilege and opportunity to give a tangible expression of their appreciation of the good work being undertaken by the Girl Scouts of the Philippines; and

WHEREAS, funds are required for the effective and continued furtherance of its operation in the intensification of its nation-wide training and recruiting program so that it can accommodate the greater number of girls of Scout age desiring admission into the organization in the promotion of other activities that greatly benefit its members and in meeting its obligations as an independent organization and as a member of the Girl Guides and Girl Scouts of the World Association;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby set aside the period from January 15 to February 14, 1951, for the Girl Scouts of the Philippines to conduct its 1951 Fund Campaign in the provinces and territories outside of Greater Manila and raise funds for the attainment of its aims and purposes. I enjoin all government officials and employees and all citizens and residents of the Philippines outside of Greater Manila to assist wholeheartedly in the campaign and to give their utmost support so that the Girl Scouts of the Philippines may be assured of funds that will enable it to carry on its work and administer its program to as many girls of Scout age as possible. I also authorize all national authorities and teachers to accept for the Girl Scouts of the Philippines, fund-raising responsibilities and urge them to give active support and leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 15th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 233

DECLARING THE PERIOD FROM FEBRUARY 15 TO
MARCH 14, 1951, AS THE TIME FOR THE FOURTH
ANNUAL FUND CAMPAIGN OF THE PHILIPPINE
NATIONAL RED CROSS.

WHEREAS, the Philippine National Red Cross is the body corporate and politic created and officially designated by Republic Act No. 95 as the voluntary organization to assist the Republic of the Philippines in the latter's fulfillment of obligations set forth in the Geneva Red Cross Convention, to which the Republic adhered on February 14, 1947, and to perform other duties inherent in a national Red Cross Society;

WHEREAS, in the faithful and efficient performance of its humanitarian mission over the years, the Philippine National Red Cross has contributed greatly to the amelioration of the sufferings of thousands of our people affected

by national calamities through its disaster relief service; to the advancement of the health, welfare and safety of countless others through its blood program, nursing service and safety service; and to the improvement of the lot of Filipino soldiers and their dependents, including veterans and hospitalized members of our Armed Forces, through its home and military welfare service;

WHEREAS, the Philippine National Red Cross operates and maintains its services solely with funds obtained from voluntary contributions through personal solicitation campaigns conducted annually by its chapters, as prescribed in its Congressional Charter;

WHEREAS, the Philippine National Red Cross requires new funds for the continuation of its many valuable services to the nation and to carry out its international responsibilities, as well as the financial support of new programs of service adopted by the organization for the benefit of the people;

WHEREAS, the critical and steadily deteriorating international peace situation emphasizes the need for the Philippine National Red Cross to be vouchsafed all possible financial help in order that it may be able to cope with any or all resultant contingencies requiring mass assistance to people in the form of food, clothing, medicine and other emergency relief needs;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby declare the period from February 15 to March 14, 1951, as the time for the Fourth Annual Fund Campaign of the Philippine National Red Cross, and I call upon all citizens and residents of this country, regardless of nationality or creed, as well as upon all public-spirited organizations and associations to support this campaign and to give generously of their means, time and personal services in furtherance of the aims and purposes of the Philippine National Red Cross. I authorize all national, provincial, city, and municipal government officials and school authorities to accept, for the Philippine National Red Cross, fund-raising responsibilities and urge them to give active leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 16th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 234

RESERVING FOR PROVINCIAL GOVERNMENT CENTER, BOY SCOUTS AND GIRL SCOUTS CAMP, AND SCHOOL SITES PURPOSES, A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF ILAGAN, PROVINCE OF ISABELA, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for Provincial Government Center, Boy Scouts and Girl Scouts Camp, and school sites purposes, under the administration of the Province of Isabela, subject to private rights, if any there be, a parcel of the public domain situated in the municipality of Ilagan, Province of Isabela, Island of Luzon, and more particularly described in the Bureau of Lands plan Pr-1011, to wit:

A parcel of land (lot 10 of plan Ts-205, G.L.R.O. Record No. _____), situated in the barrio of Calamagui, municipality of Ilagan, province of Isabela. Bounded on the NE., and E., by proposed Barrio Gumpal; on the S., and SE., by provincial or national road 60.00 m. wide; on the SW., by provincial or national road 60.00 m. wide and property of heirs of Teodulo A. Diaz; and on the NW., by lots 2, 3 and 5 of plan Pr-240 and properties of heirs of Teodulo A. Diaz, Moises 11. Cruz and National Warehousing Corporation and public land. Beginning at a point marked "1" on plan, being identical to B.L.B.M. No. 1; thence S. 44° 43' E., 283.22 m. to point 2; thence S. 3° 29' W., 322.92 m. to point 3; thence S. 22° 25' E., 236.88 m. to point 4; thence N. 80° 31' W., 42.23 m. to point 5; thence S. 75° 21' W., 37.10 m. to point 6; thence S. 47° 01' W., 50.61 m. to point 7; thence S. 47° 28' W., 208.95 m. to point 8; thence S. 65° 19' W., 18.43 m. to point 9; thence S. 87° 15' W., 19.00 m. to point 10; thence N. 79° 49' W., 29.25 m. to point 11; thence N. 51° 55' W., 33.97 m. to point 12; thence N. 22° 06' W., 87.12 m. to point 13; thence N. 33° 10' W., 20.97 m. to point 14; thence N. 37° 04' W., 20.24 m. to point 15; thence N. 62° 26' W., 20.09 m. to point 16; thence N. 66° 45' W., 18.82 m. to point 17; thence N. 88° 42' W., 21.25 m. to point 18; thence S. 86° 01' W., 84.32 m. to point 19; thence N. 82° 28' W., 38.08 m. to point 20; thence N. 68° 20' W., 31.66 m. to point 21; thence N. 54° 45' W., 15.53 m. to point 22; thence N. 41° 14' W., 26.38 m. to point 23; thence N. 24° 17' W., 226.12 m. to point 24; thence N. 23° 21' W., 25.62 m. to point 25; thence N. 35° 22' W., 25.42 m. to point 26; thence N. 68° 58' W., 20.86 m. to point 27; thence S. 86° 08' W., 34.29 m. to point 28; thence S. 84° 57' W., 217.52 m. to point 29; thence N. 16° 49' E., 228.54 m. to point 30; thence S. 68° 05' E., 30.00 m. to point 31; thence N. 49° 09' E., 142.63 m. to point 32; thence N. 43° 33' E. 52.43 m. to point 33; thence N. 52° 17' E., 287.55 m. to point 34; thence N. 54° 16' W., 184.99 m. to point 35; thence N. 31° 44' E., 267.35 m. to point 36;

thence N. 4° 15' E., 109.17 m. to point 37; thence N. 83° 43' E., 39.80 m. to point 38; thence N. 45° 05' E., 113.89 m. to point 39; thence S. 1° 38' W., 67.19 m. to point 40; thence S. 46° 35' E., 50.17 m. to point 41; thence S. 6° 54' W., 33.54 m. to point 42; thence S. 37° 38' W., 279.39 m. to point 43; thence S. 22° 47' W., 33.87 m. to the point of beginning, containing an area of 693,872 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1 by B.L.B.M. 1, point 2 by B.L.B.M. 2, point 3, 38, 39, 41, 42 and 43 by old B.L. concrete monuments and the rest by B.L. concrete monuments; bearings true; declination 0° 17' E.; date of survey, September 1, 1948—December 17, 1949, and that of the approval, July 21, 1950."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 16th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 235

DECLARING THE PERIOD FROM FEBRUARY 3 TO
9 OF EVERY YEAR AS NATIONAL DENTAL
HEALTH WEEK.

WHEREAS, the dental profession plays a vital role in the maintenance of a healthy citizenry;

WHEREAS, one of the greatest obstacles encountered by the dental profession in its mission of health service is the people's lack of appreciation of the importance of dental hygiene; and

WHEREAS, to enable the dental profession to carry out its mission more effectively, it is necessary to arouse dental health consciousness among the people;

Now, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from February 3 to 9 of every year as National Dental Health Week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 24th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 236

DECLARING THE FIRST WEEK OF MARCH OF
EVERY YEAR AS NATIONAL NUTRITION WEEK

WHEREAS, malnutrition is one of the causes of the poor state of health of many of the people; and

WHEREAS, such cause may be eliminated, or at least minimized, by making the people realize the importance of nutrition;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the first week of March of every year as National Nutrition Week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 25th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 237

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 5, SERIES OF 1923, AND RESERVING FOR NURSERY SITE PURPOSES A CERTAIN

PORTION OF THE LAND EMBRACED THEREIN
SITUATED IN THE MUNICIPALITY OF ABULUG,
PROVINCE OF CAGAYAN, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I hereby exclude from the operation of Proclamation No. 5, series of 1923, and reserve for nursery site purposes under the administration of the Director of Plant Industry, subject to private rights, if any there be, a portion of the land embraced therein situated in the municipality of Abulug, Province of Cagayan, Island of Luzon, and more particularly described in the Bureau of Lands Plan SWO-25717, to wit:

“SWO-25717
NURSERY SITE RESERVATION
Republic of the Philippines
(Bureau of Plant Industry)

A parcel of land (as shown on plant SWO-25717, situated in the barrio of Colonia, municipality of Abulug, Province of Cagayan, Island of Luzon. Bounded on the N., by lot 2116, Abulug cadastral; and on the E., S. and W., by road. Beginning at a point marked “1” on plan, being N. 82° 34' E., 3,367.77 meters from B.L.L.M. 1, Mp, of Abulug, Cagayan, thence S. 89° 52' E., 546.12 m. to point 2; thence S. 81° 31' E., 95.52 m. to point 3; thence south 400.00 m. to point 4; then west 350.00 m. to point 5; thence west 290.00 m. to point 6; thence north 220.00 m. to point 7; thence N. 0° 10' W., 195.00 m. to the point of beginning; containing an area of 264,770 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old B. L. cylindrical concrete of survey, June, 1923-Dec., 1925 and that of the approval, June 7, 1950.

NOTE.—This survey is within Abulug Agricultural Colony Ac-2.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 25th day of January, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

REPUBLIC ACTS

Enacted during the Second Special Session of the Second Congress,
Republic of the Philippines, from August 1 to 25, 1950

H. No. 1369

[REPUBLIC ACT NO. 581]

AN ACT TO AMEND REPUBLIC ACT NUMBERED FIVE HUNDRED FORTY-ONE BY INCORPORATING A NEW SECTION, TO BE KNOWN AS SECTION FOUR-A, AND TO AMEND SECTION EIGHT THEREOF.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Republic Act Numbered Five hundred forty-one is hereby amended by inserting between sections four and five a new section, to be known as section four-A, which shall read as follows:

"SEC. 4-A. *General Powers of the Pension Board.*—For the purposes of this Act, the board shall have the powers and privileges of a corporation, and as such may sue and be sued.

"The Board shall also have the power to adopt rules and regulations for the administration of the pension fund and the transaction of its business with the approval of the Secretary of the Interior; to adopt from time to time its budget, expenditures, including salaries of its personnel and to appropriate annually from its fund such amount as may be necessary to meet the same; to prescribe the form of application for pension to be issued to members of the Police and Fire Departments who are entitled to retire under this Act.

"No member of the board shall directly or indirectly take part in any investigation, deliberation or proceeding when such member is an interested party or when his application for pension is under consideration by the board, except in connection with his application for loan from the pension fund.

"The board shall also have the power to invest directly or through a banking institution authorized by law to engage in business in the Philippines, upon such terms and conditions as may be agreed upon between them, such portions of the fund or money as shall not be required to meet the current payment in the form of life pensions, death claims or otherwise and expenses incidental to the carrying out of this Act in any or all of the following ways and no others:

"(1) In interest-bearing bonds or securities of the Government of the United States or of the Philippines, or bonds or securities of said countries for the payment of the interest and principal of which the faith and credit of said countries are pledged.

"(2) In interest-bearing deposits in any bank doing business in the United States or in the Philippines, having an unimpaired paid up capital and surplus equivalent to one million five hundred thousand pesos or over: *Provided*, That said bank shall have been designated as a depository for this purpose by the President, upon recommendation of

"(3) In loans to members of the Police and Fire Departments who are entitled to the benefits of this Act and other permanent City employees with sufficient securities: *Provided*, That no loan shall be granted in excess of one month's salary payable within one year from the date the same is contracted.

"(4) And, generally, in such other loans or securities as may be approved by the Insurance Commissioner. The board shall also have the power to receive donations, gifts, legacies or bequests of individuals, corporations, associations, or any and all kinds of organization."

SEC. 2. Section eight of Republic Act Numbered Five hundred forty-one is hereby amended to read as follows:

"SEC. 8. Upon approval of this Act, any person entitled to its benefits and who is already insured with the Government Service Insurance System, is given the option to continue such insurance or to surrender his policy: *Provided*, That in case he chooses to continue such insurance he will assume full payment of the premium of the same including the contribution of the Government: *Provided, further*, That his contribution of three *per centum* of his monthly salary to the pension fund under this Act shall be made compulsory and any deduction made from his monthly pay or salary be noted in the monthly or semi-monthly payrolls of the Police Department or Fire Department as the case may be: *And provided, lastly*, That no person entitled to the benefits of this Act shall be entitled to any benefit provided for in other Acts."

SEC. 3. This Act shall take effect upon its approval.

Approved, September 15, 1950.

H. No. 322

[REPUBLIC ACT NO. 582]

AN ACT AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MAKE DISBURSEMENTS FROM THE "SUGAR ADJUSTMENT AND STABILIZATION FUND" CREATED BY COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND SIXTY-SEVEN FOR THE ESTABLISHMENT AND OPERATION OF SUGAR EXPERIMENT STATIONS AND THE UNDERTAKING OF RESEARCHES WITH A VIEW TO ADJUSTING AND STABILIZING THE SUGAR INDUSTRY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The President of the Philippines is hereby authorized to make disbursements from the "Sugar Adjustment and Stabilization Fund" created by Commonwealth Act Numbered Five hundred and sixty-seven for (1) the establishment and operation of sugar experiment stations and the undertaking of researches (a) to increase the recoveries of the centrifugal sugar factories with the view of reducing manufacturing costs, (b) to produce and propagate higher yielding varieties of sugar cane more adaptable to different district conditions in the Philippines, (c) to lower the cost of raising sugar cane, (d) to improve the burning quality of denatured alcohol from molasses for motor fuel, (e) to determine the possibility of utilizing the other by-products of the industry, (f) to determine what

crop or crops are suitable for rotation and for the utilization of excess cane lands, and (g) on other problems the solution of which would help rehabilitate and stabilize the industry; (2) the undertaking of an economic survey of the component elements thereof—the mill, landowner, and planter, to determine their present conditions, and (3) the improvement of living and working conditions in sugar mills and sugar plantations, authorizing him to designate the Sugar Rehabilitation and Readjustment Commission to take charge of the expenditure and allocation of said funds to carry out the purposes hereinbefore enumerated, and, likewise, authorizing the disbursement from the fund herein created of the necessary amount or amounts needed for salaries, wages, traveling expenses, equipment, and other sundry expenses of said Sugar Rehabilitation and Readjustment Commission.

SEC. 2. This Act shall take effect upon its approval.

Approved, September 18, 1950.

H. No. 372

[REPUBLIC ACT No. 583]

AN ACT TO CONSTITUTE A SMALL FARMERS' CO-OPERATIVE LOAN FUND FOR THE PURPOSE OF PROVIDING CREDIT FACILITIES TO SMALL FARMERS AND FARM TENANTS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A revolving fund in the amount of two million pesos is hereby created, to be known as the Small Farmers' Cooperative Loan Fund, for the purpose of providing credit facilities to small farmers and farm tenants in meeting the expenses enumerated in this Act. The term "small farmers" shall include *bona fide* farm tenants, small independent farmers, and homesteaders actually cultivating land not exceeding twenty-four hectares in area.

SEC. 2. Loans from the fund established under this Act shall be extended only to *bona fide* farmers through the corresponding cooperative association of which he is a member, and organized under existing laws to give credit, market farm products, purchase commodities, and perform other coöperative functions for their members. Farmers' coöperative associations which have been duly organized for the purpose of this Act shall be jointly and severally liable with any of their members for the repayment of any loan granted to such members from the fund established under this Act. With the exception of such liability, no security shall be required for the loans made from the said fund.

SEC. 3. Each applicant for a loan under this Act shall be entitled to borrow not more than thirty pesos for every hectare of land farmed by him. The period of such loan shall not exceed one agricultural year. The said loan shall be granted only for the purpose of (1) financing farm operations, (2) defraying the applicant's subsistence during the working season, and/or (3) purchasing seeds or seedlings, work animals, farm implements, and fertilizers.

SEC. 4. The interest on the loans granted under this Act shall not exceed six *per centum* for one agricultural year. The said loans shall be repaid during the harvest season in kind at its market value in the locality during such

SEC. 5. The amount of the fund established under this Act is appropriated out of such sums as shall be turned over by the Central Bank to the Treasury of the Philippines in accordance with Republic Act Numbered Two hundred sixty-six. The amount so appropriated shall be taken from such sums as have not been obligated under the said Republic Act Numbered Two hundred sixty-six at the date this Act takes effect.

SEC. 6. The fund established under this Act shall be administered by the Philippine National Bank, including its branches and agencies under the provincial treasurer throughout the Philippines, under such rules and regulations as the said Bank and National Coöperative Administration may promulgate to carry out the provisions of this Act.

SEC. 7. The Philippine National Bank and the National Coöperative Administration shall defray from their own funds all the expenses that may be incurred in the administration of the fund created herein.

SEC. 8. This Act shall apply to small farmers and farm tenants mentioned above preferably to those who are engaged in the cultivation of rice and corn.

SEC. 9. This Act shall take effect upon its approval.

Approved, September 18, 1950.

H. No. 1146

[REPUBLIC ACT NO. 584]

AN ACT TO AMEND ACT NUMBERED THIRTY-EIGHT HUNDRED AND FORTY-SIX BY ADDING A NEW SECTION BETWEEN SECTIONS ONE AND TWO THEREOF AND TO AMEND SECTIONS THREE, TWELVE AND THIRTEEN OF THE SAME ACT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A new section is hereby inserted between sections one and two of Act Numbered Thirty-eight hundred and forty-six, as amended, to read as follows:

"SECTION 1-A. No person, firm, company, association or corporation shall possess or own radio transmitters or transceivers (combination transmitter receiver), without registering the same with the Secretary of Commerce and Industry, nor sell or transfer the same to another without his prior approval, and no person, firm, company, association or corporation shall construct or manufacture, or purchase radio transmitters or transceivers without a permit issued by the Secretary of Commerce and Industry."

SEC. 2. Sections three, twelve, as amended, and thirteen of the same Act are hereby amended to read as follows:

"SEC. 3. The Secretary of Commerce and Industry is hereby empowered to regulate the construction or manufacture, possession, control, sale and transfer of radio transmitters or transceivers (combination transmitter receiver) and the establishment, use and operation of all radio stations and of all forms of radio communications and transmissions within the Philippines. In addition to the above, he shall have the following specific powers and duties:

"(a) He shall prescribe rules and regulations covering the construction and manufacture, possession, purchase, sale or transfer of radio transmitters or transceivers:

"(b) He shall classify radio stations and prescribe the nature of the services to be rendered by each class and by each station within any class;

"(c) He shall assign call letters and assign frequencies for each station licensed by him and for each station established by virtue of a franchise granted by the Congress of the Philippines and specify the stations to which each of such frequencies may be used;

"(d) He shall promulgate rules and regulations to prevent and eliminate interference between stations and carry out the provisions of this Act and the provisions of the International Radio Regulations: *Provided, however,* That changes in the frequencies or in the authorized power, or in the character of emitted signals, or in the type of the power supply, or in the hours of operations of any licensed station, shall not be made without first giving the station licensee a hearing;

"(e) He may establish areas or zones to be served by any station;

"(f) He may promulgate rules and regulations applicable to radio stations engaging in chain broadcasting;

"(g) He may promulgate rules and regulations requiring stations to keep record of traffic handled, distress frequency watches, programs, transmissions of energy, communications or signs;

"(h) He may conduct such investigations as may be necessary in connection with radio matters and hold hearings; summon witnesses, administer oaths and compel the production of books, logs, documents, and papers, and he may examine the books or persons, companies or associations engaged in the construction or manufacture of radio transmitters or transceivers, or of merchants dealing in the purchase and sale of radio equipment;

"(i) He may prescribe rules and regulations to be observed by radio training schools; he may supervise the course and method of instruction therein; and he may refuse to admit to examinations for radio operators' licenses graduates of radio schools not complying with the regulations;

"(j) He shall prescribe rates of charges to be paid to the Government for the inspection of stations, for the licensing of stations, for the examination of operators, for the licensing of operators, for the renewal of station or operator license, and for other services as may be rendered;

"(k) He is hereby empowered to approve or to disapprove any application for the construction, installation, establishment or operation of a radio station;

"(l) He may approve or disapprove any application for renewal of station or operator license: *Provided, however,* That no application for renewal shall be disapproved without giving the licensee a hearing;

"(m) He may, at his discretion, bring criminal action against violators of the radio laws or the regulations and confiscate the radio apparatus in case of illegal operation; or simply suspend or revoke the offender's station or operator licenses or refuse to renew such licenses; or just reprimand and warn the offenders;

"(n) The location of any station and the power and kind or type of apparatus to be used shall be subject to his approval;

"(o) He shall prescribe rules and regulations to be observed by stations for the handling of SOS messages and distress traffics: *Provided.* That such rules and regulations

shall not conflict with the provisions of the International Radio Regulations.

"SEC. 12. Any person who shall violate any provision of this Act, or any regulation prescribed by the Secretary of Commerce and Industry under this Act, or of any provision of the International Radio Regulations, shall be punished by a fine of not more than two thousand pesos or by imprisonment of not more than two years, for each and every offense, or both, in the discretion of the court.

"SEC. 13. Any firm, company, corporation or association failing or refusing to observe or violating any provision of this Act, or any provision of the Regulations prescribed by the Secretary of Commerce and Industry under this Act, or any provision of the International Radio Regulations shall be punished by a fine of not more than five thousand pesos for each and every offense."

SEC. 3. This Act shall take effect upon its approval.

Approved, September 18, 1950.

H. No. 1340

[REPUBLIC ACT No. 585]

AN ACT TO AMEND SECTION SIX OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-FIVE, OTHERWISE KNOWN AS THE RESIDENCE TAX LAW.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section six of Commonwealth Act Numbered Four hundred sixty-five, otherwise known as the Residence Tax Law, is hereby amended to read as follows:

"SEC. 6. *Presentation of residence certificate upon certain occasions.*—When a person liable to the taxes prescribed in this Act acknowledges any document before a notary public, takes the oath of office upon election or appointment to any position in the government service, receives any license, certificate or permit from any public authority, pays any tax or fee, receives any money from any public fund, or transacts other official business, or receives any salary or wage from any person or corporation, it shall be the duty of such person or officer of such corporation with whom such transaction is had or business done or from whom any salary or wage is received to require the exhibition of the residence certificates showing the payment of the residence taxes by such person: *Provided, however,* That the presentation of the residence certificate shall not be required in connection with the registration of a voter.

"When, through its authorized officers, any corporation liable to the taxes prescribed in this Act receives any license, certificate or permit from any public authority, pays any tax or fee, receives any money from any public fund, or transacts other official business, it shall be the duty of the public officials with whom such transaction is had or business done to require the exhibition of the residence certificate showing the payment of the residence taxes by such corporation.

"The certificate mentioned in the next two preceding paragraphs shall be the one issued for the current year,

except during the month of January of each year and except also in the case of the payment of the residence tax at any time during the year, in which cases the exhibition of the certificate of the previous year shall suffice."

SEC. 2. This Act shall take effect upon its approval.

Approved, September 18, 1950.

H. No. 840

[REPUBLIC ACT No. 586]

AN ACT TO INSERT A NEW SECTION BETWEEN SECTIONS TWO HUNDRED AND SIXTY AND TWO HUNDRED AND SIXTY-ONE OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AND TO AMEND SECTION TWO HUNDRED SIXTY-ONE OF THE SAME CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby inserted between sections two hundred and sixty and two hundred and sixty-one of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code, a new section to be known as section two hundred and sixty-A to read as follows:

"SEC. 260-A. *Tax on winnings.*—Every person who wins in horse races or Jai-Alai shall pay a tax equivalent to two and one-half *per centum* of his winnings or "dividends", such tax to be based on the actual amount paid to him for every winning ticket after deducting the cost of the ticket. The tax herein prescribed shall be deducted from the "dividends" corresponding to each winning ticket and withheld by the operator, manager, or person in charge of the horse races or Jai-Alai before paying the "dividends" to the person entitled thereto.

"The operator, manager, or person in charge of horse races or Jai-Alai shall, within ten days from the date the tax was deducted and withheld in accordance with the first paragraph hereof, file a true and correct return with the Collector of Internal Revenue in the manner or form to be prescribed by the Secretary of Finance, and pay within the same period the total amount of tax so deducted and withheld.

"If the tax herein provided is not paid within the time prescribed above, or in case of willful neglect to file the return within the period prescribed herein, or in case a false or fraudulent return is willfully made, there shall be added to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, the corresponding surcharges provided in section two hundred and sixty of this code."

SEC. 2. Section two hundred and sixty-one of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 261. *Amusement tax payable by charitable institutions.*—Where the admission fees or charges are collected by or for and in behalf of a duly registered charitable institution or association, the tax on such admission fees

or charges shall be fifty *per centum* of the rates provided in section two hundred and sixty of this Code."

SEC. 2. This Act shall take effect upon its approval.

Approved, September 22, 1950.

H. No. 706

[REPUBLIC ACT No. 587]

AN ACT TO AMEND SUBSECTIONS (a) AND (b) OF SECTION THREE, ARTICLE TWO OF CHAPTER ONE; SUBSECTIONS (b) AND (d) OF SECTION FIVE, SUBSECTIONS (a), (b), (c), (i), (j), (m) AND (n) OF SECTION SEVEN OF ARTICLE ONE, SECTION EIGHT, SUBSECTIONS (a) AND (d) OF SECTION NINE, AND SECTION TEN, ARTICLE TWO OF CHAPTER TWO, AND INSERT A NEW SECTION BETWEEN SECTIONS EIGHT AND NINE OF THIS ARTICLE TO BE KNOWN AS SECTION EIGHT-A WITH NEW SUBSECTIONS (a), (b), (c), AND (d), AND AMEND, FURTHER, SUBSECTION (a) OF SECTION THIRTEEN, SECTIONS FOURTEEN AND NINETEEN, ARTICLE THREE OF CHAPTER TWO; SECTIONS TWENTY-FOUR, THIRTY-ONE AND THIRTY-FIVE, ARTICLE ONE, SECTION THIRTY-EIGHT, ARTICLE TWO OF CHAPTER THREE; AND SECTION SIXTY-SEVEN OF ARTICLE ONE AND SUBSECTION (b) OF SECTION SEVENTY OF ARTICLE TWO OF CHAPTER FOUR OF ACT NUMBERED THIRTY-NINE HUNDRED AND NINETY-TWO, AS AMENDED BY COMMONWEALTH ACT NUMBERED ONE HUNDRED AND TWENTY-THREE, AND AS FURTHER AMENDED BY COMMONWEALTH ACTS NUMBERED FIVE HUNDRED AND FIFTY-SIX AND SIX HUNDRED AND FIFTY-TWO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Whenever the words "Director of Public Works" and "Bureau of Public Works" are used in Act Thirty-nine hundred and ninety-two, as amended, the same shall be substituted by the words "Chief, Motor Vehicles Office" and "Motor Vehicles Office", respectively.

SEC. 2. Subsections (a) and (b) of section three, article two, Chapter one, of Act Numbered Thirty-nine hundred and ninety-two, are hereby amended as follows:

"(a) "Motor vehicles" are all vehicles using the public highways, if propelled by any power other than muscular power, but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, and fork-lifts and cranes if not used on public highways or vehicles which run only on rails or tracks, tractors, traction engines of all kinds used exclusively for agricultural purposes."

"Trailers, having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating."

"(b) "Passenger automobiles" include all pneumatic-tired vehicles of types similar to those usually known under the following terms: touring car, command car, speedster, roadster, jeep, cycle car, (except motor wheel and similar

small outfits which are classified with motorcycles), coupe, landaulet, closed car, limousine, cabriolet, sedan, etc.

"Motor vehicles with changed or rebuilt bodies, such as jitney or station wagon, etc., using a chassis of the usual pneumatic-tired passenger automobiles, if their net allowable carrying capacity as determined by the Chief, Motor Vehicles Office does not exceed ten passengers and if they are not used primarily for carrying freight or merchandise.

"The distinction between "passenger truck" and "passenger automobile" shall be that of common usage. Usually a motor vehicle registered for more than ten passengers would be termed a truck. In case of dispute, the Chief, Motor Vehicles Office shall determine the classification to which any special type of motor vehicle belongs".

SEC. 3. Subsections (b) and (d) of section 5, article one, Chapter two of Act Numbered Thirty-nine hundred and ninety-two, are amended to read as follows:

"(b) Any registration of motor vehicles not renewed on or before the last working day of February of each calendar year shall become delinquent and invalid, except when the plates of such motor vehicles are returned to the Motor Vehicles Office in Manila, or to the Office of the District Engineer in the province on or before the last working day of December of the year of issue.

"(d) *Reports of change of motor number or/and factory number.*—No repair or change in a motor vehicle involving the exchanging, elimination, effacing, or replacing of the manufacturer's serial or motor number, or the part or parts upon which such number is stamped shall be made by any owner, proprietor or a garage or repair shop, dealer, or other person or entity without the previous approval of the Chief, Motor Vehicles Office or the District Engineer in the province on penalty of refusal to register, re-register, or transfer said vehicle: *Provided, however,* That application for registration of a motor vehicle the number of which has the trace of having been altered or tampered with, without the necessary previous approval, shall be rejected."

SEC. 4. Subsections (a), (b), (c), (i), (j), (l), (m), and (n) of section seven, article one, Chapter two of Act Numbered Thirty-nine hundred and ninety-two, are hereby amended as follows:

"(a) *Private passenger automobiles; (b) Private trucks; and (c) Private motorcycles or motor wheel attachments.*—Motor vehicles registered under these classifications shall not be used "for hire" under any circumstances, and shall not solicit or accept passenger or freight for pay. Laborers necessary to handle freight on board the private truck are allowed to ride on such truck: *Provided, however,* That seats shall not be installed in the rear compartment thereof: *And provided, further,* That only the number of such laborers, not exceeding ten, which may be needed to handle the kind of freight carried will ride on the truck: *And provided, still further,* That the combined weight of cargo and passengers does not exceed the registered net capacity of the truck.

"(i) *Hire trucks.*—Motor vehicles registered under this classification shall be allowed to carry freight only. Laborers necessary to handle such freight, are allowed to ride in the truck subject to the same limitations as for private trucks under section seven (b). They may solicit and accept freight at any place, except within a radius of one hundred meters from any "competing public station"

designated as such by the Public Service Commission: *Provided, however*, That a *bona fide* customer may engage a "hire truck" to haul and deliver definitely described shipments addressed to the customer when such shipments have been discharged at such stations by a public service vehicle, awaiting orders of the customer. Applications for registration under this classification must be accompanied by a certificate of public convenience or a special permit issued by the Public Service Commission.

"(j) *Undertakers, truck for contractor and truck for customs broker or customs agent.*—These are separate designations of "hire trucks" for motor hearses, for contracting business and for the broker's business, respectively: *Provided*, That applications for registration of trucks for contractors and trucks for customs brokers and customs agents shall be accompanied by a certificate of public convenience or a special permit issued by the Public Service Commission.

"(l) *Government automobiles: (m) Government trucks: (n) Government motorcycles.*—Motor vehicles owned or controlled by the Government of the Philippines or any of its political subsidiaries, shall be registered under these classifications. Motor vehicles owned or controlled by Government corporations and by Government employees or by foreign governments are not considered Government motor vehicles."

SEC. 5. Section eight, article two, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two, as amended by Commonwealth Acts Numbered One hundred and twenty-three, Five hundred and fifty-six and Six hundred and fifty-two, is further amended to read as follows:

"SEC. 8. *Schedule of registration fees.*—(a) Except as otherwise specifically provided in this Act, each application for registration of vehicles using motor fuel other than diesel oil, shall be accompanied by an annual registration fee in accordance with the following tariff.

"(b) Private automobiles with pneumatic rubber tires, with passenger capacity of less than seven passengers, the sum of sixty-five pesos; private automobiles with pneumatic tires with passenger capacity of from seven to ten passengers, the sum of eighty-five pesos.

"The registered passenger capacity of passenger automobiles operated for hire or for private use shall be determined as follows:

"1. For each adult passenger, not less than a horizontal rectangular area, including seat and foot space, 40 cm. wide and 60 cm. long, except in the front seat which shall allow 50 cm. wide for the operator.

"2. For each half-passenger, not less than a horizontal rectangular area, including seat and foot space, 20 cm. wide by 60 cm. long, provided, that each continuous row of seats shall not be allowed more than one half-passenger.

"(c) Private motor trucks, passenger buses and trailers with pneumatic rubber tires, the sum of five pesos per hundred kilograms of maximum allowable gross weight or fraction thereof: *Provided*, That upon trucks owned by duly licensed persons, firms, or associations engaged in creative or productive industries the existing rate of four pesos shall be imposed.

"(d) Private motor trucks, passenger buses and trailers with solid rubber tires or with part solid and part pneu-

matic rubber tires, the sum of seven pesos per hundred kilograms of maximum allowable gross weight or fraction thereof.

“(e) Private motor vehicles with metallic tires in whole or in part, the sum of fifteen pesos per hundred kilograms of maximum allowable gross weight or fraction thereof.

“(f) Private motorcycles of two or three wheels and bicycles with motor attachments, the sum of fifteen pesos.

“(g) The fee for registration of diesel-oil-consuming vehicles shall be fifty per cent more than that of vehicles using motor fuel other than diesel oil. The fee for registration of motor vehicles for hire shall be sixty per cent more than the fees prescribed for private motor vehicles.

“(h) *Dealers.*—No fees shall be charged for the general registration of motor vehicles contemplated under the dealers classifications, but in lieu thereof they shall pay the special fees for dealer's number plates provided hereinafter.

“(i) Registration under the ‘Government motor vehicle’ classification shall be free of charge, on request of the chief of bureau or office concerned.

“(j) Tourists bringing their own motor vehicles to the Philippines, shall be exempt from payment of registration fees under this Act during but not after the first thirty days of their sojourn.

“After the first thirty days, they shall be subject to the regular fees, except that the Chief, Motor Vehicles Office, or his deputies may, in his discretion, require payment of fees in advance for only the fractional part of a year for which the tourist expects to remain in the Philippines.

“(k) Motor vehicles not intended to be operated or used upon any public highway or motor vehicles operated on highways not constructed or maintained by the Government, or to be placed out of service for any other reason, shall be exempt from payment of the registration fees, provided in this Act: *Provided, however,* That no refund, credit for, or reimbursement of registration fees or parts thereof shall be made to any owner on account of a motor vehicle which is taken out of service subsequent to the payment of such registration fees.

“(l) The maximum allowable gross weight of a motor truck, passenger bus, or trailer, upon which to compute the registration fee thereof, shall be obtained by regulations to be promulgated by the Chief, Motor Vehicles Office. The Chief, Motor Vehicles Office shall upon passage of this Act and from time to time thereafter as the needs of the service may require, prepare suitable tables of maximum allowable loads per wheel for different sizes and kinds of tires and shall issue regulations for the proper use thereof subject to the approval of the Secretary of Public Works and Communications, as provided in section four (a) hereof. The registration fees provided in this Act for trucks may be payable in two equal installments, the first to be paid on or before the last working day of February, and the second to be paid on or before the last working day of August.”

SEC. 6. A new section to be known as section eight—A is hereby provided as follows:

“SEC. 8—A. *Permissible weights and dimensions of vehicles in highway traffic.*

“(a) The maximum gross weight and measurement of motor vehicles, unladen or with load, permissible on public highways shall be as specified hereunder, subject to such regulations as the Secretary of Public Works and Communications may promulgate as the conditions of the public highways may determine and as the needs of the service may require from time to time.

“Permissible maximum weights:

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| 1. Per most heavily loaded wheel.. | 3,600 kilograms |
| 2. Per most heavily loaded axle..... | 8,000 kilograms |
| 3. Per most heavily loaded axle group (the two axles of the group being at least one meter and less than two meters apart) | 14,500 kilograms |

“An axle weight shall be the total weight transmitted to the road by all wheels the centers of which can be included between the parallel transverse vertical planes one meter apart extending across the full width of the vehicle.

“(b) No motor vehicle operating as a single unit shall exceed the following dimensions:

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| “Overall width | 2.5 meters |
| “Overall height | 4.0 meters |
| “Overall length: | |
| Goods vehicles with two axles..... | 10.0 meters |
| Passenger vehicles with two axles.. | 11.0 meters |
| Vehicles with three or more axles..... | 11.0 meters |
| Articulated vehicles | 14.0 meters |

“(c) No motor vehicle and/or trailer combination shall exceed eighteen meters in overall projected length, including any load carried on such vehicle and trailer.

“(d) ‘Articulated vehicle’ means any motor vehicle with a trailer having no front axle and so attached that part of the trailer is super-imposed upon the motor vehicle and a substantial part of the weight of the trailer and of its load is born by the motor vehicle. Such a trailer shall be called a ‘semi-trailer’.”

“(e) No articulated vehicle shall be allowed to draw or pull a trailer and no vehicle already drawing a trailer may draw another.”

SEC. 7. Subsections (a) and (d) of section nine, article two, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two are hereby amended to read as follows:

“(a) To operate a motor vehicle or trailer outfit such that the wheel, axle, or axle group loads in kilograms shall exceed the limits fixed in subsection (a) of section eight—A hereof.

“(d) For registration or use of a motor vehicle exceeding the limit of permissible dimensions specified in subsections (b) and (c) of section eight—A hereof.”

SEC. 8. Section ten, article two, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two is hereby amended to read as follows:

“SEC. 10. *Additional fees.*—In addition to the fees elsewhere provided in this Act, for each change of registration status, from private to hire or *vice-versa*; revision of gross weight rating; change of tire size; transfer of ownership; duplicate to replace a lost registration certificate, number plate, tag, chauffeur’s license or permit; badge;

preparation of affidavit or certified copy of records, or for any similar circumstance requiring the issue, revision or re-issue of a certificate of registration, chauffeur's license, badge, permit, or other document, a fee of two pesos shall be collected, to cover the clerical expense of investigating and recording same.

"The issuance of a duplicate certificate, number plate, tag, license, badge or permit shall render the original invalid.

"In case of a request in writing for certification of data or facts involving two or more vehicles, prepared and issued in tabulated form, a fee of five pesos per page or part thereof shall be collected for each certification, to cover the clerical expense of investigating and preparing the same."

SEC. 9. Subsection (a) of section thirteen of article three, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two is hereby amended to read as follows:

"SEC. 13. *Use and authority of certificate of registration.*—(a) The said certificate shall be preserved and carried in the car by the owner as evidence of the registration of the motor vehicle described therein, and shall be attached to and presented with subsequent applications for re-registration or transfer of ownership on penalty of refusal by the Chief, Motor Vehicles Office to re-register or transfer until the said certificate is presented or a duplicate purchased as provided in this Act.

"In lieu, however, of the certificate of registration of a motor vehicle, a true copy thereof, or any other evidence of ownership and payment of current registration fee, may be carried in the car."

SEC. 10. Section fourteen, article three, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

"SEC. 14. *Suspension of registration certificate.*—If on inspection as provided under section four (h) hereof, the Chief, Motor Vehicles Office, or his deputies find any motor vehicle to be unsightly, dangerous, overloaded, or capable of causing excessive damage as aforesaid, he may refuse to register the same; or if already registered he may require the number plates to be surrendered to him; and upon seventy-two hours notice to the owner or operator, suspend such registration until the defects of the vehicles are corrected. When the record of any particular motor vehicle or of its chauffeurs shows for any twelve months period, more than three warnings to the owner or chauffeur for violations of this Act, or of the Public Service Acts, or more than one conviction by the courts, the Chief, Motor Vehicles Office may in his discretion or upon recommendation of the Public Service Commissioner, suspend the certificate of registration and require the surrender of the number plates for a period not to exceed sixty days."

"After two such suspensions, the owner may be refused re-registration of the vehicle concerned for one year.

"The action of the Chief, Motor Vehicles Office, or his deputies under this section shall be communicated in writing to the owner of the motor vehicle."

SEC. 11. Section nineteen, article three, Chapter two, of Act Numbered Thirty-nine hundred and ninety-two is hereby amended to read as follows:

"SEC. 19. *Dealers' number plates.*—To any dealer who desires to operate motor vehicles from his stock, for demonstration or test purposes, the Chief, Motor Vehicles Office shall furnish special dealer's number plates, upon payment of fifteen pesos annually for each plate furnished or retained in such service, plus a fee of fifty centavos for each year tag issued, if any."

SEC. 12. Section twenty-four, article one, Chapter three, of Act Numbered Thirty-nine hundred and ninety-two is hereby amended to read as follows:

"SEC. 24. *Driver's license, fees, examination.*—Every person who desires personally to operate any motor vehicle shall make application to the Chief, Motor Vehicles Office, or his deputies for a license to drive motor vehicles: *Provided, however,* That no person shall be issued a professional chauffeur's license who is suffering from highly contagious diseases, such as, advanced tuberculosis, gonorrhea, syphilis, and the like.

"Each such application except in the case of enlisted men operating Government owned vehicles shall be accompanied by a fee of two pesos, and shall contain such information respecting the applicant and his ability to operate motor vehicles, as may be required by the Chief, Motor Vehicles Office.

"The Chief, Motor Vehicles Office, or his deputies shall also ascertain that the applicant's sight and hearing are normal, and may, in their discretion, require a certificate to that effect, signed by a reputable physician.

"An examination on or demonstration to show any applicant's ability to operate motor vehicles may also be required in the discretion of the Chief, Motor Vehicles Office, or his deputies."

SEC. 13. Section thirty-one, article one, Chapter three, of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

"SEC. 31. *Renewal of license.*—Any license not renewed on or before the last working day of February of each year shall become delinquent and invalid.

"The fee for renewal of delinquent license shall be five pesos.

"Every applicant for renewal of license to operate a motor vehicle shall present to the Chief, Motor Vehicles Office, either in person or by mail or messenger the license issued to the applicant for the previous year, together with the proper fee of five pesos and, in the case of professional chauffeurs, three copies of a readily recognized photograph of the applicant which photograph shall have been taken not exceeding three years prior to the date of application for renewal.

"*Lost license.*—In case the license for the previous year has been lost or cannot be produced, the applicant shall obpenalty of refusal, by the Chief, Motor Vehicles Office, or his deputies to renew the license: *Provided, however,* That tain a duplicate on accord with section ten of this Act, on the Chief, Motor Vehicles Office or his deputies may, in their discretion, accept in lieu of the previous year's license, the duly signed and sworn statement of an operator to the effect that he has not operated any motor vehicle in the

Philippines during the year or years for which no license was issued in his name.

"The Chief, Motor Vehicles Office and his deputies are hereby authorized to administer the oath in connection with such an affidavit."

SEC. 14. Section thirty-five, article one, Chapter three, of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

"SEC. 35. *Student's permit*.—Upon receipt of the fee of two pesos the Chief, Motor Vehicles Office, or his deputies are further authorized to issue student permits good for six months, to persons not under eighteen years of age, who desire to learn to operate motor vehicles. The Chief, Motor Vehicles Office may in his discretion require six months' operation as a student, as a prerequisite to the acceptance of an application for a chauffeur's license.

"In the discretion of the Chief, Motor Vehicles Office, or his deputies, persons claiming to have learned to operate motor vehicles in other countries or States, may be allowed to apply for a regular license without the previous requirement of a student's permit.

"A student operator who applies for a regular license, but fails to prove competent in the examination, shall continue as a student for at least one additional month. No student's permit shall authorize the person to whom the same is issued to operate a motor vehicle in any public highway, unless accompanied by a person carrying a regular license for the current year, issued under this Act to operate such motor vehicle.

"The licensed chauffeur acting as instructor shall be responsible and liable for any violation of the provisions of this Act and for any injury or damage done by a motor vehicle, on account or as a result of its operation by a student under his direction."

SEC. 15. Section thirty-eight, article two, Chapter three of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

"SEC. 38. *Imitation and false representations*.—No person shall make or use or attempt to make or use a chauffeur's license, badge, certificate of registration, number plate, tag, or permit in imitation or similitude of those issued under this Act, or intended to be used as or for a legal license, badge, certificate, plate, tag or permit, or with intent to sell or otherwise dispose of the same to another. No person shall falsely or fraudulently represent as valid and in force any chauffeur's license, badge, certificate, plate, tag or permit issued under this Act which is delinquent or which has been revoked or suspended.

"No person shall knowingly and with intent to deceive make one or more false or fraudulent statements in an application for the registration of vehicles, or for a chauffeur's license."

SEC. 16. Section sixty-seven, article one, Chapter four, of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

"SEC. 67. *Violation and penalties*.—The following penalties shall be imposed for violations of this Act.

"(a) *For delinquent registration*.—For registration later than seven days after taking possession of an unregistered

motor vehicle or after conversion of a registered motor vehicle requiring larger registration fee than that for which it was originally registered or for renewal of a delinquent registration the penalty shall be a fifty per cent addition to the fees mentioned in section eight hereof, corresponding to the portion of the year for which the vehicle is registered for use.

“(b) For failure to sign chauffeur’s license or its duplicate or to carry same while operating, twenty pesos fine.

“(c) For operation with a delinquent or invalid license, fifty pesos fine.

“(d) If, as the result of negligence or reckless or unreasonably fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor vehicle driver at fault, shall, upon conviction be punished under the provisions of the Penal Code.

“(e) For failure to stop in case of accident, one hundred pesos fine or imprisonment of not less than one month nor more than three months, or both, in the discretion of the Court.

“(f) For operation of a motor vehicle without proper number plates or tags for the current year, three hundred pesos fine.

“(g) For operation of a motor vehicle, with delinquent, suspended or invalid registration, or without registration, one hundred pesos fine.

“(h) For operation of a motor vehicle by an unlicensed operator, one hundred pesos fine.

“(i) For operating a motor vehicle while under the influence of liquor, a fine of not less than one hundred pesos nor more than two hundred pesos or an imprisonment of not more than three months, or both, in the discretion of the Court.

“(j) For using a private passenger automobile, private trucks, private motorcycles, and motor wheel attachments for hire, in violation of section seven, subsections (a), (b), and (c), of this Act, a fine of two hundred pesos and suspension of chauffeur’s license for a period of three months for the first conviction; and a fine of three hundred pesos and six months imprisonment for the second conviction; and an imprisonment of one year and permanent revocation of the chauffeur’s license for the third conviction, shall be imposed.

“(k) For permitting, allowing, consenting to, or tolerating the use of a private owned motor vehicle for hire in violation of sections seven, subsections (a), (b), and (c) of this Act, there shall be imposed a fine of two hundred pesos for the first conviction, and an increase of one hundred pesos for each subsequent conviction.

“(l) For violation of any provision of this Act or regulations not hereinbefore specifically punished, a fine of not less than fifty pesos nor more than one hundred pesos shall be imposed: *Provided*, That any person found guilty of any violation of section thirty-eight of this Act shall pay a fine of not less than one hundred pesos nor more than two hundred pesos.”

SEC. 17. Subsection (b) of section seventy, article two, Chapter four, of Act Numbered Thirty-nine hundred and ninety-two, is hereby amended to read as follows:

“(b) No other taxes or fees than those prescribed in this Act shall be imposed for the registration or operation or on the ownership of any motor vehicle, or for the exercise of the profession of chauffeur, by any municipal corporation, the provisions of any city charter to the contrary notwithstanding: *Provided, however,* That any provincial board, city or municipal council or board, or other competent authority may exact and collect such reasonable and equitable toll fees for the use of such bridges and ferries, within their respective jurisdictions, as may be authorized and approved by the Secretary of Public Works and Communications, and also for the use of such public roads, as may be authorized by the President of the Philippines upon recommendation of the Secretary of Public Works and Communications, but in none of these cases, shall any toll fees be charged or collected until and unless the approved schedule of tolls shall have been posted legibly in a conspicuous place at such toll station.”

SEC. 18. This Act shall take effect on January 1, 1951.

Approved, September 22, 1950.

H. No. 867

[REPUBLIC ACT NO. 588]

AN ACT TO AMEND CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION. 1. Section one hundred and eighty-four of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section one of Republic Act Numbered Three hundred and ninety-six, is hereby further amended to read as follows:

“SEC. 184. *Percentage tax on sales of jewelry, automobiles, toilet preparations, and others.*—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to fifty *per centum* of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: *Provided,* That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles:

“(a) Automobile chassis and bodies, the selling price of which exceeds five thousand pesos but does not exceed seven thousand pesos: *Provided,* That where the selling price of an automobile exceeds seven thousand pesos the same shall be taxed at the rate of seventy-five *per centum* of such selling price. A sale of automobile shall, for the purpose of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped;

“(b) All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments, silver-plated ware, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes;

“(c) Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hairdressings, hair restoratives, hair dyes, and any similar substance, article, or preparations, by whatsoever name known or distinguished, except tooth and mouth washes, dentrifices, tooth paste, and talcum or medicated toilet powders; and any of the above which are used or applied or intended to be used or applied for toilet purposes: *Provided*, That the tax herein imposed shall not apply to toilet preparations on which the specific tax established in section one hundred and twenty-seven has been paid;

“(d) Dice and mahjong sets;

“(e) Beauty parlor equipment and accessories; and

“(f) Polo mallets and balls; golf bags, clubs and balls; and chess and checker boards and pieces.”

SEC. 2. Section one hundred and eighty-five of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by Republic Act Numbered Three hundred and ninety-six, is hereby further amended to read as follows:

“SEC. 185. *Percentage tax on sales of automobiles, sporting goods, refrigerators, and others.*—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to thirty *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer, producer, or importer: *Provided*, That where articles are manufactured out of materials subject to tax under this section and section one hundred and eighty-six, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles:

“(a) Automobile chassis and bodies, the selling price of which does not exceed five thousand pesos. A sale of automobile shall, for the purposes of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped;

“(b) Watches and clocks, the value of which exceeds fifty pesos each; marine glasses, field glasses, binoculars; and cinematographic films of not more than eight millimeters in width;

“(c) Fishing rods and reels;

“(d) Celluloid and bakelite;

“(e) Refrigerators of more than seven cubic feet: *Provided*, That refrigerators of seven cubic feet or less shall be taxed at the rate of twenty *per centum* of the selling price;

“(f) Beverage coolers, ice cream cabinets, water coolers, food and beverage storage cabinets, ice making machines, and mild cooler cabinets, each such article having or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or other means;

“(g) Phonographs; combination radio and phonograph sets; phonograph records; juke boxes, gramophones and similar articles for reproducing music;

“(h) Firearms, parts and accessories; and cartridges or other forms of ammunition: *Provided, however*, That no tax shall be collected on firearms and cartridges or other forms of ammunition sold and delivered directly to the Philippine Army for their actual use or issue;

“(i) Electric fans and air circulators (except those specially adopted for industrial use); electric, gas or oil water heaters; electric flat irons, electric, gas or oil appliances of the type used for cooking, warming, or keeping warm food or beverage for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners: *Provided*, That electric flat irons the selling price of which does not exceed fifty pesos, shall be taxed at the rate of twenty *per centum*.

“(j) Unexposed photographic films (including motion picture films but not including X-Ray films), photographic plates and sensitized paper; photographic apparatus and equipment; and any apparatus or equipment designed especially for use in the taking of photographs or motion picture or in the developing, printing, or enlarging of photographs or motion picture films. Under this classification, the tax shall be twenty *per centum*.

“(k) Neon-tube signs, electric signs, and electric advertising devices;

“(l) Washing machines of all types;

“(m) Air-conditioning units and parts or accessories thereof;

“(n) Mechanical lighters;

“(o) Upholstered furniture (except rattan); tables, desks, chairs, showcases, bookcases, lockers, and cabinets (other than filing cabinets) of which wood, rattan or bamboo is not the component material of chief value, but not including iron or steel chairs and tables costing not more than six pesos each and medical or dental equipment or apparatus;

“(p) Textiles in the piece, wholly or in chief value of silk, wool, linen or nylon; wool and silk hats; and furs and manufactures thereof;

“(q) Fountain pens and parts or accessories thereof the gross selling price of which exceeds fifteen pesos: *Provided*, That if their selling price does not exceed fifteen pesos, they shall be taxed at the rate prescribed in section one hundred and eighty-six hereof.”

SEC. 3. Section one hundred and eighty-six of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section three of Republic Act Numbered Forty-one, is hereby further amended to read as follows:

“SEC. 186. *Percentage tax on sales of other articles.*—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar

transaction either for nominal or valuable consideration to transfer ownership of, or title to, the articles not enumerated in section one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: *Provided*, That where the articles are manufactured out of materials, subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: *And provided, further*, That with respect to all forest products, whether manufactured or in the original form, a tax equivalent to five *per centum* only of the selling price or gross value in money shall be levied, assessed, and collected.

"In the case of operators or proprietors of sawmills, who buy logs for the purpose of sawing and/or cutting them into lumber of standard sizes, the tax prescribed in this section shall be computed on thirty-three and one-third *per centum* of the gross cost of logs purchased during any given quarter intended for manufacture. Operators or proprietors of sawmills entitled to the privilege of paying the tax on thirty-three and one-third *per centum* of the gross cost of the logs purchased by them shall keep a complete record of their transactions, especially their purchase of logs together with the corresponding vouchers, such as official and auxiliary invoices, or the commercial invoices of the producers from whom they purchased the logs, in cases where the logs purchased constitute merely a portion of the logs covered by an official invoice, in which commercial invoices the assessment numbers of the official invoices covering the logs and the names and addresses of the vendors shall be indicated. They shall also keep a complete record of lumber purchased by them for resale."

SEC. 4. Section one hundred and ninety-one of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section one of Republic Act Numbered Thirty-nine, is hereby further amended to read as follows:

"SEC. 191. *Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.*—Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; persons engaged in the installation of gas, or electric light, heat, or power; persons selling light, heat, or power, except those paying a franchise tax; proprietors or operators of dockyards, mine drilling apparatus, smelting plants, engraving plants, plating establishments, dry-cleaning or dyeing establishments, steam laundries, photographic studios, telephone or telegraph lines or exchanges, broadcasting or wireless stations, funeral parlors, shops for the construction or repair of bicycles or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, and tailor shops, beauty parlors, dressmakers, milliners, hatters, keepers of hotels, lodging houses, stevedores, warehousemen; plumbers; smiths; house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication

of any newspaper, magazine, review, or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements, printers, and book-binders, shall pay a tax equivalent to three *per centum* of their gross receipts.

"Keepers of restaurants, refreshment parlors and other eating places shall pay a tax of three *per centum*, and keepers of bars and cafes where wines or liquors are served, five *per centum*, of their gross receipts. Where such establishments are maintained within the premises or compound of a race-track or jai-alai or are accessible to patrons of such race-track or jai-alai by means of a connecting door or passage, the keepers of such establishments shall pay a tax of twenty *per centum* of their gross receipts. Where the establishment is maintained within the premises of a cabaret or night club, or is accessible to patrons thereof by means of a connecting door or passage, the keeper of the establishment shall pay a tax of ten *per centum* of the gross receipts.

"Contractors or others whose gross receipts do not exceed two hundred pesos each quarter shall be exempt from the payment of the taxes provided for in this section. Owners or operators of business covered by franchises shall likewise be exempt from the tax imposed in the first paragraph of this section."

SEC. 5. Section one hundred and ninety-three of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section two of Republic Act Numbered Forty-two, is hereby further amended to read as follows:

"SEC. 193. *Amount of tax on business.*—Fixed taxes on business shall be collected as follows, the amount stated being for the whole year, when not otherwise specified:

"(a) Brewers, one thousand pesos.

"(b) Distillers of spirits, one hundred pesos, if the annual production does not exceed fifty thousand gauge liters; two hundred pesos, if the annual production exceeds fifty thousand gauge liters but does not exceed one hundred thousand gauge liters; four hundred pesos, if the annual production exceeds one hundred thousand gauge liters but does not exceed two hundred and fifty thousand gauge liters; and six hundred pesos, if the annual production exceeds two hundred and fifty thousand gauge liters; rectifiers of distilled spirit, compounders, and repackers of wines or distilled spirits, four hundred and fifty pesos.

"(c) Wholesale peddlers of distilled, manufactured, or fermented liquor, one hundred pesos.

"(d) Wholesale peddlers of manufactured tobacco, fifty pesos.

"(e) Retail peddlers of distilled, manufactured, or fermented liquor, one hundred and fifty pesos.

"(f) Retail peddlers of manufactured tobacco, sixteen pesos.

"(g) Wholesale liquor dealers—

"1. In the City of Manila, six hundred pesos;

"2. In chartered cities other than Manila, four hundred pesos;

"3. In any other place, one hundred and fifty pesos.

“(h) Wholesale dealers in fermented liquors, except basi, tuba and tapuy, one hundred and fifty pesos.

“(i) Retail liquor dealers, one hundred pesos.

“(j) Retail *vino* dealers, twenty pesos.

“(k) Retail dealers in fermented liquors, fifty pesos.

“(l) Retail leaf tobacco dealers, thirty pesos.

“(m) Manufacturers of tobacco and manufacturers of cigars and cigarettes—

“1. In the City of Manila, four hundred pesos;

“2. In any other place, one hundred pesos.

“(n) Wholesale tobacco dealers, sixty pesos; retail tobacco dealers, sixteen pesos.

“(o) Manufacturers or importers of playing cards, two hundred pesos.

“(p) Manufacturers, producers, or importers of soft drinks or mineral waters, one hundred pesos.

“(q) Stockbrokers, dealers in securities, real estate brokers, real estate dealers, commercial brokers, customs brokers and immigration brokers, one hundred and fifty pesos.

“(r) Owners of race tracks for each day on which races are run on any track, five hundred pesos.

“(s) Lending investors—

“1. In chartered cities and first-class municipalities, three hundred pesos;

“2. In second-class municipalities, one hundred and fifty pesos;

“3. In third-class municipalities, one hundred and fifty pesos; and

“4. In fourth and fifth-class municipalities and municipal districts, seventy-five pesos: *Provided*, That lending investors who do business as such in more than one province shall pay a tax of three hundred pesos.

“(t) Business agents (*agentes de negocios*), sixty pesos.

“(u) Cinematographic film owners, lessors or distributors, two hundred pesos.”

SEC. 6. Paragraph (s) of section one hundred and ninety-four of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section three of Republic Act Numbered Forty-two, is hereby further amended to read as follows:

“(s) ‘Real estate broker’ includes any person, other than a real estate salesman as hereinafter defined, who for another, and for a compensation or in the expectation or promise of receiving compensation, (1) sells or offers for sale, buys or offers to buy, lists, or solicits for prospective purchasers, or negotiates the purchase, sale or exchange of real estate or interests therein; (2) or negotiates loans on real estate; (3) or leases or offers to lease or negotiates the sale, purchase or exchange of a lease, or rents or places for rent or collects rent from real estate or improvements thereon; (4) or shall be employed by or on behalf of the owner or owners of lots or other parcels of real estate at a

stated salary, on commission, or otherwise, to sell such real estate or any parts thereof in lots or parcels. 'Real estate salesman' means any natural person regularly employed by a real estate broker to perform on behalf of such broker any or all of the functions of a real estate broker. One act of a character embraced within the above definition shall constitute the person performing or attempting to perform the same real estate broker. But the foregoing definitions do not include a person who shall directly perform any of the acts aforesaid with reference to his own property, where such acts are performed in the regular course of or as an incident to the management of such property; nor shall they apply to persons acting pursuant to a duly executed power of attorney from the owner authorizing final consummation by performance of a contract conveying real estate by sale, mortgage or lease; nor shall they apply to any receiver, trustee or assignee in bankruptcy or insolvency, or to any person acting pursuant to the order of any court; nor to a trustee selling under a deed of trust. 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year: *Provided, however,* That an owner of sugar lands subject to tax under Commonwealth Act Numbered Five hundred and sixty-seven shall not be considered as a real estate dealers under this definition."

SEC. 7. Section one hundred and ninety-five of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 195. *Percentage tax on stock, real estate, commercial, customs and immigration brokers and cinematographic film owners, lessors, or distributors.*—Stock, real estate, commercial, customs, and immigration brokers shall pay a percentage tax equivalent to six *per centum* of the gross compensation received by them. Cinematographic film owners, lessors, or distributors shall pay a percentage tax of two *per centum* of their gross receipts.

"The records kept by said brokers and cinematographic film owners, lessors or distributors may be used as evidence to determine the amount of the percentage tax due from them, and the Collector of Internal Revenue may assess and collect the tax due on the compensation or gross receipts earned in accordance with said records.

"In any case, the amount of the compensation or gross receipts of said brokers and cinematographic film owners, lessors, or distributors shall be reported quarterly within the time established for the other quarterly reports of sales and receipts."

SEC. 8. This Act shall take effect upon its approval, but unless otherwise expressly extended by Congress, the increased tax provided for in this Act shall continue in force and effect only until December thirty-first, nineteen hundred and fifty-two, after which period the original rates of tax shall again be in force.

Approved, September 22, 1950.

H. No. 869

[REPUBLIC ACT No. 589]

AN ACT TO AMEND SECTIONS ONE HUNDRED AND THIRTY-THREE, ONE HUNDRED AND THIRTY-FOUR, ONE HUNDRED AND THIRTY-FIVE, ONE HUNDRED AND THIRTY-SEVEN, ONE HUNDRED AND FORTY, AND ONE HUNDRED AND FORTY-SEVEN OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one hundred and thirty-three of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section one of Republic Act Numbered Two hundred and nineteen, is hereby further amended to read as follows:

SEC. 133. *Specific tax on distilled spirits.*—On distilled spirits there shall be collected, except as hereinafter provided, specific taxes as follows:

“(a) If produced from sap of the nipa, coconut, cassava, camote, or buri palm, or from the juice, syrup, or sugar of the cane, per proof liter, sixty centavos.

“(b) If produced from any other materials, per proof liter, seven pesos.

“This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits.

“‘Distilled spirits’, as here used, include all substances known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wines, which are commonly produced by the fermentation and subsequent distillation of grain, starch, molasses, or sugar, or of some syrup or sap, including all dilutions or mixtures; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately or at any subsequent time transformed into any other substances either in process of original production or by any subsequent process.

“‘Proof spirits’ is liquor containing one-half of its value of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths at fifteen degrees centigrade. A proof liter means a liter of proof spirits.”

SEC. 2. Section one hundred and thirty-four of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section two of Republic Act Numbered Two hundred and nineteen, is hereby further amended to read as follows:

“SEC. 134. *Specific tax on wines.*—On wines and imitation wines there shall be collected, per liter of volume capacity, the following taxes;

“(a) Sparkling wines, regardless of proof, eight pesos.

“(b) Still wines containing fourteen *per centum* of alcohol or less, except those produced from *casuy* and *duhat*, seventy-five centavos.

“(c) Still wines containing more than fourteen *per centum* of alcohol, one peso and fifty centavos.

“Imitation wines containing more than twenty-five *per centum* of alcohol shall be taxed as distilled spirits.”

SEC. 3. Section one hundred and thirty-five of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section three of Republic Act Numbered Two hundred and nineteen, is hereby further amended to read as follows:

"SEC. 135. *Specific tax on fermented liquors.*—On beer, larger beer, ale, porter, and other fermented liquors (except *tuba*, *basi*, *tapuy* and similar domestic fermented liquors), there shall be collected, on each liter of volume capacity, twenty centavos."

SEC. 4. Section one hundred and thirty-seven of Commonwealth Act Numbered Four hundred and sixty-six, as amended by section four of Republic Act Numbered Two hundred and nineteen, is hereby further amended to read as follows:

"SEC. 137. *Specific tax on cigars and cigarettes.*—On cigars and cigarettes there shall be collected the following taxes:

"(a) Cigars—

"(1) When the manufacturer's or importer's wholesale price, less the amount of the tax, does not exceed thirty pesos per thousand, on each thousand, two pesos and thirty centavos.

"(2) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds thirty pesos but does not exceed sixty pesos per thousand, on each thousand, four pesos and sixty centavos.

"(3) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds sixty pesos per thousand, on each thousand, seven pesos.

"(b) Cigarettes—

"(1) On cigarettes wrapped in tinfoil or cellophane, or packed in cartons covered with paraffin or wax paper, when the manufacturer's or importer's wholesale price, less the amount of the tax, is five pesos or less per thousand, on each thousand, six pesos, but the tax shall be increased by one hundred *per centum* if the cigarettes are mechanically packed.

"(2) On cigarettes wrapped in tinfoil or cellophane, or packed in cartons covered with paraffin or wax paper, when the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds five pesos but not more than six pesos per thousand, on each thousand, eight pesos, but the tax shall be increased by one hundred *per centum* if the cigarettes are mechanically packed.

"(3) On cigarettes wrapped in tinfoil or cellophane, or packed in cartons covered with paraffin or wax paper, when the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds six pesos per thousand, on each thousand, ten pesos, but the tax shall be increased by one hundred *per centum* if the cigarettes are mechanically packed.

"The maximum price at which the various classes of cigars and cigarettes are sold at wholesale in the factory

or in the establishment of the importer to the public shall determine the rate of the tax applicable to such cigars and cigarettes; and if the manufacturer or importer also sells, or allows to be sold, his cigars and cigarettes at wholesale in another establishment of which he is the owner or in the profits of which he has an interest, the maximum sale price in such establishment shall determine the rate of the tax applicable to the cigars and cigarettes therein sold: *Provided, however*, That when such maximum wholesale price is less than the cost of manufacture or importation plus all expenses incurred until the cigars or cigarettes are finally sold by the manufacturer or importer, such cost plus expenses shall determine the amount of tax to be applied: *And provided, further*, That on all cigarettes of eighty millimeters or less in length not wrapped in tin-foil or cellophane nor packed in cartons covered with paraffin or wax paper, a tax of three pesos and fifty centavos per thousand shall be collected if the wholesale price, less the amount of the tax, does not exceed five pesos per thousand, and a tax of eight pesos per thousand shall be collected if the wholesale price, less the amount of the tax, exceeds five pesos per thousand, but the tax shall be increased by fifty *per centum* per thousand if such cigarettes are more than eighty millimeters in length. Cigarettes shall be considered as mechanically packed when at any stage of the packing, a machine or any mechanical contrivance shall have been used.

"Every manufacturer or importer of cigars and cigarettes shall file with the Collector of Internal Revenue, on the date or dates designated by the latter, a sworn statement showing the maximum wholesale prices of cigars and cigarettes, together with the cost of manufacture or importation plus expenses incurred or to be incurred until the cigars or cigarettes are finally sold and it shall be unlawful to sell said cigars and cigarettes at wholesale at a price in excess of the one specified in the statement required by this Title without previous statement showing the maximum wholesale prices of cigars and cigarettes, together with the cost of manufacture or importation plus expenses incurred or to be incurred until the cigars or cigarettes are finally sold and it shall be unlawful to sell said cigars and cigarettes at wholesale at a price in excess of the one specified in the statement required by this Title without previous written notice to said Collector of Internal Revenue. In the case of imported cigars and cigarettes, the sworn statement required herein shall be accompanied by verified sales invoices of the manufacturers of the cigars and cigarettes as well as the consular invoice issued by a Philippine Consul, should one be available at the place of origin or shipment."

SEC. 5. Section one hundred and forty of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section nine of Republic Act Numbered Fifty-six, is hereby further amended to read as follows:

"SEC. 140. *Specific tax on firecrackers.*—On all firecrackers, there shall be collected for each kilogram a tax of five pesos."

SEC. 6. Section one hundred and forty-seven of Commonwealth Act Numbered Four hundred and sixty-six, as last amended by section thirty of Republic Act Numbered Fifty-six, is hereby further amended to read as follows:

"SEC. 147. *Specific tax on playing cards.*—(a) On each pack of cards containing not more than sixty cards, there shall be collected a tax of three pesos: *Provided, however,* That when the size of playing cards is two and one-half centimeters by six centimeters or less, there shall be collected a tax of three pesos, on each pack containing not more than sixty cards.

"(b) On each pack containing more than sixty cards, there shall be collected the tax established in subsection (a) and a proportionate additional tax on the number in excess of sixty."

SEC. 7. This Act shall take effect upon its approval but, unless otherwise expressly extended by Congress, the increased rates of tax provided for in this Act shall continue in force and effect only until December thirty-first, nineteen hundred and fifty-two, after which period the actual rates of tax shall again be in force.

Approved, September 22, 1950.

H. No. 1127

[REPUBLIC ACT NO. 590]

AN ACT TO AMEND CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AND TO ADD TO TITLE II THEREOF A SUPPLEMENT PROVIDING FOR THE WITHHOLDING OF THE INCOME TAX ON WAGES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section twenty-one of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Eighty-two, is further amended to read as follows:

"SEC. 21. *Rates of tax on citizens or residents.*—There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year from all sources by every individual, a citizen or resident of the Philippines, a tax equal to the sum of the following:

"Five *per centum per annum* upon the amount by which such total net income does not exceed two thousand pesos;

"Eight *per centum per annum* upon the amount by which such total net income exceeds two thousand pesos and does not exceed four thousand pesos;

"Twelve *per centum per annum* upon the amount by which such total net income exceeds four thousand pesos and does not exceed six thousand pesos;

"Eighteen *per centum per annum* upon the amount by which such total net income exceeds six thousand pesos and does not exceed ten thousand pesos;

"Twenty-four *per centum per annum* upon the amount by which such total net income exceeds ten thousand pesos and does not exceed twenty thousand pesos;

"Thirty *per centum per annum* upon the amount by which such total net income exceeds twenty thousand pesos and does not exceed thirty thousand pesos;

"Thirty-six *per centum per annum* upon the amount by which such total net income exceeds thirty thousand pesos and does not exceed forty thousand pesos;

"Forty *per centum per annum* upon the amount by which such total net income exceeds forty thousand pesos and does not exceed fifty thousand pesos;

"Forty-two *per centum per annum* upon the amount by which such total net income exceeds fifty thousand pesos and does not exceed sixty thousand pesos;

"Forty-four *per centum per annum* upon the amount by which such total net income exceeds sixty thousand pesos and does not exceed seventy thousand pesos;

"Forty-six *per centum per annum* upon the amount by which such total net income exceeds seventy thousand pesos and does not exceed eighty thousand pesos;

"Forty-eight *per centum per annum* upon the amount by which such total net income exceeds eighty thousand pesos and does not exceed ninety thousand pesos;

"Fifty *per centum per annum* upon the amount by which such total net income exceeds ninety thousand pesos and does not exceed one hundred thousand pesos;

"Fifty-two *per centum per annum* upon the amount by which such total net income exceeds one hundred thousand pesos and does not exceed one hundred and twenty thousand pesos;

"Fifty-three *per centum per annum* upon the amount by which such total net income exceeds one hundred and twenty thousand pesos and does not exceed one hundred and forty thousand pesos;

"Fifty-four *per centum per annum* upon the amount by which such total net income exceeds one hundred and forty thousand pesos and does not exceed one hundred and sixty thousand pesos;

"Fifty-five *per centum per annum* upon the amount by which such total net income exceeds one hundred and sixty thousand pesos and does not exceed two hundred thousand pesos;

"Fifty-six *per centum per annum* upon the amount by which such total net income exceeds two hundred thousand pesos and does not exceed two hundred and fifty thousand pesos;

"Fifty-seven *per centum per annum* upon the amount by which such total net income exceeds two hundred and fifty thousand pesos and does not exceed three hundred thousand pesos;

"Fifty-eight *per centum per annum* upon the amount by which such total net income exceeds three hundred thousand pesos and does not exceed four hundred thousand pesos;

"Fifty-nine *per centum per annum* upon the amount by which such total net income exceeds four hundred thousand pesos and does not exceed five hundred thousand pesos; and

"Sixty *per centum per annum* upon the amount by which such total net income exceeds five hundred thousand pesos."

SEC. 2. Subsection (b) of section twenty-two of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Eighty-two, is hereby further amended to read as follows:

"(b) *Nonresident alien not engaged in trade or business within the Philippines or not having an office or place of*

business therein.—There shall be levied, assessed, collected, and paid for each taxable year upon the entire net income received from all sources within the Philippines by every nonresident alien individual not engaged in trade or business within the Philippines or not having an office or place of business therein a tax equal to sixteen *per centum* thereof: *Provided*, That if the total net income of such nonresident alien individual from all sources within the Philippines exceeds fourteen thousand seven hundred and fifty pesos, the rates established in section twenty-one shall apply.”

SEC. 3. Subsections (a), (b), (c) and (d) of section twenty-three of Commonwealth Act Numbered Four hundred and sixty-six are hereby amended to read as follows:

“SEC. 23. *Amount of personal exemptions allowable to individuals.*—For the purpose of the tax provided for in this Title, there shall be allowed in the nature of a deduction from the amount of net income the following personal exemptions:

“(a) *Personal exemption of single individuals.*—The sum of one thousand eight hundred pesos, if the person making the return is a single person or a married person legally separated from his or her spouse.

“(b) *Personal exemption of married persons or heads of family.*—The sum of three thousand pesos, if the person making the return is a married man with a wife not legally separated from him or a married woman with a husband not legally separated from her, or the head of a family: *Provided*, That only one exemption of three thousand pesos shall be made from the aggregate income of both husband and wife when not legally separated. For the purpose of this section, the term ‘head of a family’ includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognized natural, or adopted children dependent upon him or her for their chief support where such brothers, sisters, or children are less than twenty-one years of age or where such children are incapable of self-support because mentally or physically defective.

“(c) *Additional exemption for dependents.*—The sum of six hundred pesos for each legitimate, recognized natural, or adopted child wholly dependent upon the taxpayer, if such dependents are under twenty-one years of age, or incapable of self-support because mentally or physically defective. The additional exemption under this subsection shall be allowed only if the person making the return is the head of a family.

“(d) *Change of status.*—If the status of the taxpayer insofar as it affects the personal and additional exemption for himself or his dependents, changes during the taxable year by reason of his death, the amount of the personal and additional exemptions shall be apportioned, under rules and regulations prescribed by the Secretary of Finance, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.”

SEC. 4. Section twenty-four of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Eighty-two, is hereby further amended to read as follows:

"SEC. 24. *Rate of tax on corporations.*—There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (*compañías colectivas*), a tax of sixteen *per centum* upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources within the Philippines by every corporation organized, authorized, or existing under the laws of any foreign country: *Provided, however*, That Building and Loan Associations operating as such in accordance with section one hundred and seventy-one to one hundred and ninety of the Corporation Law, as amended, shall pay a tax of nine *per centum* on their total net income: *And provided, further*, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only twenty-five *per centum* thereof shall be returnable for purposes of the tax imposed by this section."

SEC. 5. Section thirty of Commonwealth Act Numbered Four hundred and sixty-six, as amended, is hereby further amended by adding thereto a new subsection which shall read as follows:

"(j) *Optional standard deduction.*—In lieu of the deductions allowed under this section an individual, other than a nonresident alien, may elect a standard deduction. Such optional standard deduction shall be in the amount of one thousand pesos or in an amount equal to ten *per centum* of his gross income, whichever is the lesser. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction he shall be considered as having availed himself of the deductions allowed in the preceding subsection. The Secretary of Finance shall prescribe the manner of the election. Such election when made in the return shall be irrevocable for the taxable year for which the return is made."

SEC. 6. Subsection (a) of section forty-five of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 45. *Individual returns.*—(a) *Requirement.*—(1) Every citizen of the Philippines of lawful age, whether residing at home or abroad and, (2) every person residing in the Philippines, though not a citizen thereof, having a gross income of one thousand eight hundred pesos or over, including dividends, for the taxable year, and (3) every nonresident alien deriving income from sources within the Philippines regardless of amount, shall file an income tax return, in duplicate, setting forth specifically the gross amount of income from all sources and deducting from the total thereof the aggregate items of allowances authorized under this Title, in such form and manner as the Collector of Internal Revenue, with the approval of the Secretary of Finance, may prescribe."

SEC. 7. Subsections (a) and (b) of section fifty-three of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Eighty-two, is hereby further amended to read as follows:

"(a) *Tax-free covenant bonds.*—(1) *Requirement of withholding.*—In any case where bonds, mortgages, deeds

of trust, or other similar obligations of domestic or resident foreign corporations, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this Title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the Philippines, or of any state or country, the obligor shall deduct and withhold a tax equal to sixteen *per centum* of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, and whether such bonds, obligations, or securities had been heretofore or are hereafter issued or marketed, and the interest thereon paid, within or without the Philippines if such interest is payable to a nonresident alien individual or to a citizen or resident of the Philippines.

“(2) *Benefit of exemptions against net income.*—Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest if such person shall file with the withholding agent, on or before February first, a signed notice in writing claiming the benefit of the exemption provided in section twenty-three of this Title.

“(b) *Nonresident aliens.*—All persons, corporations and general copartnerships (*compañías colectivas*.) in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, fiduciaries, employers, and all officers and employees of the Government of the Philippines having the control, receipt, custody, disposal, or payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, not engaged in trade or business within the Philippines and not having any office or place of business therein, shall (except in the cases provided for in subsection (a) of this section) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to sixteen *per centum* thereof: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the Philippines or has an office or place of business therein, and (2) more than eighty-five *per centum* of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the Philippines as determined under the provisions of section thirty-seven: *Provided, further*, That the Collector of Internal Revenue may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.”

SEC. 8. Section fifty-four of Commonwealth Act Numbered Four hundred and sixty-six, as amended by Republic Act Numbered Eighty-two, is further amended to read as follows:

“SEC. 54. *Payment of corporation income tax at source.*—In the case of foreign corporations subject to taxation

under this Title not engaged in trade or business within the Philippines and not having any office or place of business therein there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in section fifty-three a tax equal to eighteen *per centum* thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section".

SEC. 9. Section fifty-eight of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 58. *Exemption allowed to estates and trusts.*—For the purpose of the tax provided for in this Title, there shall be allowed an exemption of one thousand eight hundred pesos from the income of the estate or trust."

SEC. 10. Section sixty-one of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 61. *Fiduciary returns.*—Guardians, trustees, executors, administrators, receivers, conservators, and all persons or corporations, acting in any fiduciary capacity, shall render, in duplicate, a return of the income of the person, trust, or estate for whom or for which they act, and be subject to all the provisions of this Title, which apply to individuals in case such person, estate, or trust has a gross income of one thousand eight hundred pesos or over during the taxable year. Such fiduciary or person filing the return for him or it, shall take oath that he has sufficient knowledge of the affairs of such persons, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this Title which apply to individuals: *Provided*, That a return made by or for one of two or more joint fiduciaries filed in the province where such fiduciary resides, under such regulations as the Secretary of Finance may prescribe, shall be a sufficient compliance with the requirements of this section."

SEC. 11. Section seventy-seven of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

"SEC. 77. *Information at source as to payments of one thousand eight hundred pesos or more.*—All persons, corporations or duly registered copartnerships (*compañías colectivas*), in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employees, making payment to another person, corporation, or duly registered general copartnership (*compañía colectiva*), of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, other than payments described in sections seventy-five and seventy-nine, of one thousand eight hundred pesos or more in any taxable year, or, in the case of such payments made by the Government of the Philippines, the officers or employees of the Government having information as to such payments and required to make returns in regard thereto, are authorized and required to render a true and accurate return to the Collector of Internal Revenue, under such rules and regulations and in such form and manner as may be prescribed by the Secretary

of Finance, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment: *Provided*, That such returns shall be required, regardless of amount in the case of payments of interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, and in the case of collections of items, not payable in the Philippines, of interest upon the bonds of foreign countries and interest from the bonds and dividends from the stock of foreign corporations by persons, corporations, or duly registered general copartnerships (*compañías colectivas*), undertaking as a matter of business or for profit or otherwise the collection of foreign payments of such interest or dividends by means of coupons or bills of exchange."

SEC. 12. *Supplement to Title II of Code.*—There is hereby added to Title II of the National Internal Revenue Code, as amended, as a supplement to, and an integral part of, the said Title, the following provisions to be known as "Supplement A":

"SUPPLEMENT A—WITHHOLDING ON WAGES

"ARTICLE 1. *Definitions.*—As used in this supplement—

"(a) *Wages.*—The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

- (1) for agricultural labor paid entirely in products of the farm where the labor is performed, or
- (2) for domestic service in a private home, or
- (3) for casual labor not in the course of the employer's trade or business, or
- (4) for services by a citizen or resident of the Philippines for a foreign government or an international organization.

"If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than thirty-one consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

"(b) *Payroll period.*—The term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual period.

"(c) *Employee.*—The term "employee" refers to any individual who is the recipient of wages and includes an officer, employee, or elected official of the Government of the Philippines or any political subdivision, agency or instrumentality thereof. The term "employee" also includes an officer of a corporation.

“(d) *Employer*.—The term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

- (1) if the person for whom the individual performs or performed any services does not have control of the payment of the wages for such services, the term “employer” (except for the purposes of subarticle (a) means the person having control of the payment of such wages; and
- (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership or foreign corporation, not engaged in trade or business within the Philippines, the term “employer” [except for the purposes of subarticle (a)] means such person.

“ART. 2. *Income tax collected at source*—(a) *Requirement of withholding*.—Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with a withholding table to be prepared by the Secretary of Finance.

“(b) *Tax paid by recipient*.—If the employer, in violation of the provisions of this supplement, fails to deduct and withhold the tax as required under this supplement, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subarticle shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

“(c) *Nondeductibility of tax in computing net income*.—The tax deducted and withheld under this article shall not be allowed as a deduction either to the employer or to the recipient of the income in computing net income under this Title.

“(d) *Refunds or credits*—(1) *Employer*.—Where there has been an overpayment of tax under this article, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld hereunder by the employer.

“(2) *Employees*.—The amount deducted and withheld under this supplement during any calendar year shall be allowed as a credit to the recipient of such income against the tax imposed under the main provisions of this Title. Refunds and credits in cases of excessive withholding shall be granted under rules and regulations promulgated by the Secretary of Finance.

“(e) *Personal exemptions*—(1) *In general*.—Unless otherwise provided in this supplement, the personal and additional exemptions applicable under this supplement shall be determined in accordance with the main provisions of this Title.

“(2) *Exemptions certificates*—(A) *when to be filed*.—On or before the date of the commencement of employment with an employer, or within ten days from the effectivity of this Act in case of persons already employed, the employee shall furnish the employer with a signed withholding exemption certificate relating to the personal and additional exemptions to which he is entitled.

“(B) *Change of status*.—In case of change of status of an employee as a result of which he would be entitled to a lesser amount of exemption, the employee shall, within ten days from such change, file with the employer a new withholding exemption certificate reflecting the change. If the change would entitle the employee to a greater amount of exemption, he may furnish the employer with a new withholding exemption certificate reflecting such change.

“(C) *Use of certificates*.—The certificates filed hereunder shall be used by the employer in the determination of the amount of taxes to be withheld.

“(D) *Failure to furnish certificate*.—Where an employee, in violation of this supplement, either fails or refuses to file a withholding exemption certificate, the employer shall withhold the taxes prescribed under schedule for zero exemption of the withholding tax table in subarticle (a).

“(f) *Withholding on basis of average wages*.—The Collector of Internal Revenue may, under regulations promulgated by the Secretary of Finance, authorize employers (1) to estimate the wages which will be paid to an employee in any quarter of the calendar year, (2) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages, paid, and (3) to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be required to be deducted and withheld during such quarter without regard to this subarticle.

“(g) *Husband and wife*.—When a husband and wife each are recipients of wages, whether from the same or from different employers, taxes to be withheld shall be determined on the following bases:

- (1) The husband shall be deemed the head of the family and proper claimant of the additional exemption in respect to any dependent children;
- (2) Taxes shall be withheld from the wages of the wife in accordance with the schedule for zero exemption of the withholding tax table in subarticle (a).

“(h) *Nonresident aliens*.—Wages paid to nonresident alien individuals shall not be subject to the provisions of this supplement and shall be governed by the provisions of section fifty-three of this Title.

“ART. 3. *Liability for tax*.—The employer shall be liable for the payment of the tax required to be deducted and withheld under this supplement, and shall not be liable to any person for the amount of any such payment.

“ART. 4. *Return and payment to the Government of taxes withheld*.—Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or, in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers. The Collector of

Internal Revenue may, with the approval of the Secretary of Finance, require employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government.

"ART. 5. *Return and payment in case of Government employees.*—If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

"ART. 6. *Statements and returns*—(a) *Requirement.*—Every employer required to deduct and withhold a tax in respect of the wages of an employee shall furnish to each such employee in respect of his employment during the calendar year, on or before January thirty-first of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the wages paid by the employer to such employee during the calendar year, and the amount of the tax deducted and withheld under this supplement in respect of such wages. The statement required to be furnished by this article in respect of any wages shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary of Finance may by regulations prescribe.

"(b) *Returns.*—Every employer required to deduct and withhold the taxes in respect of the wages of his employees shall, on or before January thirty-first of the succeeding year, submit to the Collector of Internal Revenue a return of the total amount withheld during the year accompanied by copies of the statements referred to in the preceding paragraph. This return, if made and filed in accordance with regulations promulgated by the Secretary of Finance, shall be sufficient compliance with the requirements of section seventy-seven of this Title in respect of such wages.

"(c) *Extension of time.*—The Collector of Internal Revenue, under such regulations as may be promulgated by the Secretary of Finance, may grant to any employer a reasonable extension of time to furnish and submit the statements and returns required under this article.

"ART. 7. *Surcharges for failure to render returns and for rendering false or fraudulent returns; delinquency in payment of taxes.*—The surcharges prescribed in section seventy-two of this Title in cases of failure to render returns and for filing false or fraudulent returns shall apply to the returns required under Articles four and five.

"In case the taxes deducted and withheld by the employer are not paid within the time prescribed, there shall be added a surcharge of five *per centum* on the amount of tax unpaid and interest at the rate of one *per centum* a month upon the amount required to be paid from the time the same became due until paid.

"ART. 8. *Penalties*—(a) *Penalties for failure to file, and for filing fraudulent returns or statements.*—Any person who wilfully renders or furnishes a false or fraudulent return or statement required under the provisions of

articles four, five and six or under regulations promulgated by the Secretary of Finance, or who wilfully fails to render or furnish a statement as required in this supplement, shall upon conviction, for each such act or omission, be fined not less than one thousand pesos nor more than two thousand pesos and imprisoned for not more than one year.

“(b) *Penalties in respect of withholding exemption certificates.*—Any individual required to supply information who wilfully supplies false or fraudulent information, or who wilfully fails to supply information thereunder which would require an increase in the tax to be withheld under article two, shall, in lieu of any penalty otherwise provided, upon conviction be fined not more than one thousand pesos or imprisoned for not more than one year, or both.

“The same penalty shall apply to an employer who wilfully accepts as a fact or as true information which would reduce the tax to be withheld under article two hereof.

“(c) *Penalties on corporate officers.*—The penalties prescribed in this article shall, in the case of an employer which is a corporation, partnership, or association, be imposed on the president, manager, treasurer, or other persons responsible for the particular act or omission.

“ART. 9. *Verification of returns, etc.*—(a) *Power of Collector of Internal Revenue to require.*—The Collector of Internal Revenue, under regulations promulgated by the Secretary of Finance, may require that any return, statement, or other document required to be filed under this supplement, or under regulations promulgated by the Secretary of Finance, shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

“(b) *Penalties.*—Every person who wilfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction, shall be subject to the penalties prescribed for perjury under the Revised Penal Code.”

SEC. 13. No salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is hereby declared not to be a diminution of his compensation fixed by the Constitution or by law.

SEC. 14. *Treatment of fractions.*—In computing net income under Title II of Commonwealth Act Numbered Four hundred and sixty-six, as amended, a fraction of a peso shall be disregarded. In computing the tax on the annual returns required under the said Title, a fraction of a peso less than fifty centavos shall be disregarded, and a fraction of a peso amounting to fifty centavos or more shall be considered as one peso. In case of overpayment or underpayment of income tax where the amount involved is less than one peso, no refund or collection shall be made.

SEC. 15. *Payment with backpay certificate.*—When an employee is entitled to backpay under the provisions of Republic Act Numbered Three hundred and four, the amount of income tax withheld under this Act shall, if he

elects to pay his annual income tax with his backpay, be refunded to him unless the backpay being negotiated is insufficient to cover his tax liability, in which case only the excess of the total of the amount withheld and the amount of such backpay rights being negotiated, over his total income tax liability shall be refunded.

SEC. 16. *Effective date.*—This Act shall apply to income received from January first, nineteen hundred and fifty, except section twelve hereof which shall take effect on January first, nineteen hundred and fifty-one: *Provided, however,* That, unless otherwise expressly extended by Congress, the increased taxes provided for in this Act shall continue in force and effect only until December thirty-first, nineteen hundred and fifty-two, after which period the actual rates of taxes shall again be in force.

Approved, September 22, 1950.

RESOLUTIONS OF CONGRESS

Adopted during the First Session of the Second Congress, Republic of the Philippines, from January 23 to May 18, 1950

H. Ct. R. No. 10

[CONCURRENT RESOLUTION No. 5]

CONCURRENT RESOLUTION PROVIDING THAT THE SENATE AND THE HOUSE OF REPRESENTATIVES HOLD A JOINT SESSION TO HEAR THE MESSAGE OF THE PRESIDENT OF THE PHILIPPINES.

Resolved by the House of Representatives of the Philippines, the Senate concurring, That both Houses of the Congress of the Philippines hold a joint session on January 23, 1950 at ten-thirty o'clock in the morning in the Session Hall of the House of Representatives, to hear the message of the President of the Philippines.

Adopted, January 23, 1950.

H. Ct. R. No. 29

[CONCURRENT RESOLUTION No. 6]

CONCURRENT RESOLUTION EXPRESSING THE APPRECIATION OF THE PEOPLE AND GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FOR THE HONORABLE CARLOS P. ROMULO FOR HIS SERVICES AS THEIR REPRESENTATIVE TO THE UNITED NATIONS AND FOR HIS CONTRIBUTION TO THE CAUSE OF WORLD PEACE.

WHEREAS, the Honorable Carlos P. Romulo, Chief of the Philippine Mission to the United Nations, was elected in September, 1949 as President of the Fourth General Assembly of the United Nations;

WHEREAS, in this high capacity he has advanced the cause of peace in these perilous times of the cold war and the atomic bomb by his courageous statesmanship and steadfast loyalty to the objectives of the United Nations; and

WHEREAS, his wise, tactful and devoted leadership of the United Nations has earned for himself the respect and admiration of his colleagues representing fifty-nine nations, and for his country a place of rare honor and dignity in that great assemblage of sovereign states: Now, therefore, be it

Resolved by the House of Representatives of the Philippines, the Senate concurring, To convey, as they do hereby convey, to the Honorable Carlos P. Romulo the profound appreciation of the People and Government of the Republic of the Philippines for the great service he has rendered as their representative to the United Nations and for his contribution to the cause of world peace and international understanding.

Adopted, April 18, 1950.

H. Ct. R. No. 45

[CONCURRENT RESOLUTION No. 7]

CONCURRENT RESOLUTION INVITING THE HONORABLE CARLOS P. ROMULO, PRESIDENT OF THE FOURTH GENERAL ASSEMBLY OF THE UNITED NATIONS, TO ADDRESS THE CONGRESS OF THE PHILIPPINES IN JOINT SESSION.

WHEREAS, the Honorable Carlos P. Romulo, President of the Fourth General Assembly of the United Nations, has just set foot on the soil of his beloved native land in whose service he has consecrated the best years of his life;

WHEREAS, he comes home for the first time after his election as President of the greatest deliberative body in the world and earning, through demonstrated ability, industry, statesmanship, and loyalty to the cause of One-World, honor and fame for the Republic of the Philippines; and

WHEREAS, the Congress of the Philippines desire to show to him the appreciation of the Filipino people and their own for his magnificent achievements in world affairs: Now, therefore, be it

Resolved by the House of Representatives of the Philippines, the Senate concurring, To extend to the Honorable Carlos P. Romulo, the most cordial invitation of the Congress of the Philippines to address it in joint session on April eighteen, nineteen hundred and fifty, at four o'clock in the afternoon, in the Session Hall of the House of Representatives.

Resolved, further, That a copy of this Resolution be transmitted to the Honorable Carlos P. Romulo by a committee composed of three Members of the Senate and three Members of the House of Representatives.

Adopted, April 18, 1950.

H. Ct. R. No. 47

[CONCURRENT RESOLUTION No. 9]

CONCURRENT RESOLUTION CONCURRING IN PROCLAMATION NUMBERED ONE HUNDRED SEVENTY-FIVE OF THE PRESIDENT OF THE PHILIPPINES, DATED APRIL FIFTEEN, NINETEEN HUNDRED FIFTY, REVOKING PROCLAMATION NO. 666, DATED JANUARY 14, 1941, AND DECLARING ALL PETROLEUM DEPOSITS AND PETROLEUM LANDS COVERED THEREBY OPEN TO DISPOSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 387, OTHERWISE KNOWN AS THE PETROLEUM ACT OF 1949.

WHEREAS, the President of the Philippines issued on April fifteen, nineteen hundred fifty, the following Proclamation:

“PROCLAMATION No. 175

“REVOKING PROCLAMATION NO. 666, DATED JANUARY 14, 1941, AND DECLARING ALL PETROLEUM DEPOSITS AND PETROLEUM LANDS COVERED THEREBY OPEN TO DIS-

POSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 387, OTHERWISE KNOWN AS THE PETROLEUM ACT OF 1949.

"Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 11 of Commonwealth Act No. 137, as amended, I hereby revoke Proclamation No. 666, dated January 14, 1941, and declare all petroleum deposits and petroleum lands covered thereby open to disposition under the provisions of Republic Act No. 387, otherwise known as the Petroleum Act of 1949.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Baguio, this 15th day of April, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

"ELPIDIO QUIRINO

"President of the Philippines"

"By the President

"TEODORO EVANGELISTA

"Executive Secretary"

WHEREAS, under section eleven of Commonwealth Act Numbered One hundred thirty-seven, the aforesaid Proclamation Numbered One hundred seventy-five shall not take effect until it is concurred in by a resolution of the Congress of the Republic of the Philippines duly adopted for the purpose; and

WHEREAS, it is the interest of the nation for the Congress to concur in the above-quoted Proclamation: Now, therefore, be it

Resolved by the House of Representatives of the Philippines, the Senate concurring, To concur in Proclamation Numbered One hundred seventy-five of the President of the Philippines, dated April fifteen, nineteen hundred fifty, in accordance with the provisions of section eleven of Commonwealth Act Numbered One hundred thirty-seven.

Adopted, May 13, 1950.

H. Ct. R. No. 51

[CONCURRENT RESOLUTION NO. 11]

CONCURRENT RESOLUTION INSTRUCTING THE COMMITTEE ON CODIFICATION OF LAWS OF THE HOUSE AND THE COMMITTEE ON CODES OF THE SENATE TO MAKE JOINT STUDIES AND HOLD JOINT MEETINGS AND HEARINGS ON THE CIVIL CODE AND ON THE PROPOSED CODE OF CRIMES.

WHEREAS, the Civil Code was enacted last year to take effect one year after its publication;

WHEREAS, many proposed amendments to the Civil Code have been filed in both Houses of the Congress;

WHEREAS, the Code Commission has already completed the draft of the Code of Crimes and submitted the same to the President; and

WHEREAS, it is necessary that joint meetings and hearings be held by the corresponding committees of both Houses of the Congress so that a thorough revision of the Civil Code and a comprehensive study of the proposed Code of Crimes may be made: Now, therefore, be it

Resolved by the House of Representatives of the Philippines, the Senate concurring, That the Committee on Codification of Laws of the House and the Committee on Codes of the Senate be, and the same hereby are, instructed and authorized to function during the recess of the Congress in order to make joint studies and hold joint meetings and hearings on proposed amendments to and the revision of the Civil Code and on the proposed Code of Crimes. The said Committees shall submit their joint report and recommendations during the next regular session of the Congress.

Adopted, May 18, 1950.

H. Ct. R. No. 50

[CONCURRENT RESOLUTION No. 12]

CONCURRENT RESOLUTION EXPRESSING THE SUPPORT OF THE CONGRESS OF THE PHILIPPINES FOR THE BILL IN THE AMERICAN CONGRESS TO APPROPRIATE AN ADDITIONAL SUM OF ONE HUNDRED MILLION DOLLARS FOR THE PHILIPPINE WAR DAMAGE COMMISSION AND REQUESTING THE PRESIDENT OF THE PHILIPPINES TO NEGOTIATE FOR A ONE YEAR EXTENSION OF THE PROGRAM OF SAID COMMISSION TO RESTORE DAMAGED PUBLIC PROPERTY.

WHEREAS, a bill is under consideration in the American Congress to provide for an additional One Hundred Million Dollars for war damage payments in the Philippines;

WHEREAS, the enactment of said bill will restore in fuller measure the damages sustained by the Filipino people during the last war when they maintained a heroic loyalty to the United States;

WHEREAS, it is reported that the program of the Philippine War Damage Commission for the restoration of damaged public property, pursuant to Section 304, of the Philippine Rehabilitation Act of 1946, may not be completed by June 30, 1950, the terminal date of said program, thereby resulting in the reversion of the appropriated funds therefor to the United States treasury to the prejudice of the Philippines: Now therefore, be it

Resolved by the House of Representatives of the Philippines, the Senate concurring:

(1) To express, as they do hereby express, the support of the Congress of the Philippines for the bill pending in the Congress of the United States to appropriate an additional sum of One Hundred Million Dollars for war damage payments in the Philippines in accordance with the Philippine Rehabilitation Act of nineteen hundred and forty-six; and

(2) To request, as they do hereby request, the President of the Philippines to make the necessary representation

to the Government of the United States of America to extend until June thirty, nineteen hundred and fifty-one, the period for the allocation of the appropriation and the completion of the program for the restoration and improvement of public property under section three hundred and four of the Philippine Rehabilitation Act of nineteen hundred and forty-six.

Adopted, May 17, 1950.

H. Ct. R. No. 52

[CONCURRENT RESOLUTION No. 13]

CONCURRENT RESOLUTION PROVIDING FOR THE
ADJOURNMENT OF THE FIRST SESSION OF
THE SECOND CONGRESS OF THE REPUBLIC OF
THE PHILIPPINES, TODAY, THURSDAY, MAY
EIGHTEEN, NINETEEN HUNDRED AND FIFTY,
NOT LATER THAN TWELVE O'CLOCK MID-
NIGHT.

*Resolved by the House of Representatives of the Philip-
pines, the Senate concurring,* That the President of the
Senate and the Speaker of the House of Representatives
be, as they hereby are, authorized to declare the First
Session of the Second Congress of the Republic of the Philip-
pines adjourned *sine die*, by adjourning the sessions of their
respective Houses today, Thursday, May eighteen, nineteen
hundred and fifty, not later than twelve o'clock midnight;

Resolved, further, That a committee of three members
of the House, appointed by the Speaker of the same, join
a committee of the Senate, and wait on the President of
the Philippines to inform him that the First Session of
the Second Congress of the Republic of the Philippines is
about to close, and that the two Houses are ready to ad-
journ, unless the Chief Executive has some message or
communication to transmit to them.

Adopted, May 18, 1950.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

The Executive Office

PROVINCIAL CIRCULAR (Unnumbered)

December 21, 1950

ABOLITION OF DEPARTMENT OF THE INTERIOR

To all Provincial Governors and City Mayors:

Executive Order No. 383, abolishing the Department of the Interior, transferring its powers, duties and functions to the Office of the President, and for other purposes, was signed by the President of the Philippines on December 20, 1950. The pertinent provisions of said Order are quoted hereunder for the information and guidance of all concerned:

"SECTION 1. The Department of the Interior is hereby abolished and all the powers, duties and functions conferred upon the Secretary of the Interior by existing laws, rules and regulations are hereby transferred to, vested in, and shall be assumed and exercised by the President.

"SEC. 3. Executive Order No. 167, dated October 8, 1938, revising the instructions and delimiting the responsibilities of the Secretary of the Interior and the Secretary of Finance in the supervision and control of the personnel and finances of the provincial, city and municipal governments is hereby modified in the sense that budgets of the provincial and city governments shall hereafter be submitted directly for action by the Department of Finance.

"SEC. 5. This Order shall take effect immediately * * *."

In view of the foregoing, it is requested that henceforth all powers and/or correspondence customarily sent to the Department of the Interior be addressed or forwarded to this Office, except budgets of provincial and city governments which shall be submitted directly to the Department of Finance.

Provincial Governors are requested to transmit, as soon as possible, the contents of this circular to all mayors under their jurisdiction.

MARCIANO ROQUE

Acting Assistant Executive Secretary

PROVINCIAL CIRCULAR (Unnumbered)

January 23, 1951

DECLARING THE PERIOD FROM FEBRUARY 15 TO MARCH 14, 1951, AS THE TIME FOR THE FOURTH ANNUAL FUND CAMPAIGN FOR THE PHILIPPINE NATIONAL RED CROSS UNDER PROCLAMATION NO. 233 OF THE PRESIDENT.

To all Provincial Governors and City Mayors:

For the information and guidance of all concerned under your respective jurisdiction, there are quoted hereunder the pertinent portions of Proclamation No. 233 of the President of the Philippines on the above-entitled subject:

"WHEREAS, the Philippine National Red Cross is the body corporate and politic created and officially designated by Republic Act No. 95 as the voluntary organization to assist the Republic of the Philippines in the latter's fulfillment of obligations set forth in the Geneva Red Cross Convention, to which the Republic adhered on February 14, 1947, and to perform other duties inherent in a national Red Cross Society;

"WHEREAS, in the faithful and efficient performance of its humanitarian mission over the years, the Philippine National Red Cross has contributed greatly to the amelioration of the sufferings of thousands of our people affected by national calamities through its disaster relief service; to the advancement of the health, welfare and safety of countless others through its blood program, nursing service and safety service; and to the improvement of the lot of Filipino soldiers and their dependents, including veterans and hospitalized members of our Armed Forces, through its home and military welfare service;

"WHEREAS, the Philippine National Red Cross operates and maintains its services solely with funds obtained from voluntary contributions collected through personal solicitation campaigns conducted annually by its chapters, as prescribed in its Congressional Charters;

"WHEREAS, the Philippine National Red Cross requires new funds for the continuation of its many valuable services to the nation and to carry out its international responsibilities, as well as the financial support of new programs of service adopted by the organization for the benefit of the people;

"WHEREAS, the critical and steadily deteriorating international peace situation emphasizes the need for the Philippine National Red Cross

to be vouchsafed all possible financial help in order that it may be able to cope with any or all resultant contingencies requiring mass assistance to people in the form of food, clothing, medicine and other emergency relief needs;

"Now, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby declare the period from February 15 to March 14, 1951, as the time for the Fourth Annual Fund Campaign of the Philippine National Red Cross, and I call upon all citizens and residents of this country, regardless of nationality or creed, as well as upon all public-spirited organizations and associations to support this campaign and to give generously of their means, time and personal services in furtherance of the aims and purposes of the Philippine National Red Cross. I authorize all national, provincial, city, and municipal government officials and school authorities to accept, for the Philippine National Red Cross, fund-raising responsibilities and urge them to give active leadership in their respective communities."

It is requested that all the local officials be advised of the contents hereof and urged to exert their utmost to help ensure the success of this year's campaign of the Philippine National Red Cross.

MARCIANO ROQUE

Acting Assistant Executive Secretary

Department of Finance

REVENUE REGULATIONS NO. V-6

November 28, 1950

AMENDMENTS TO REGULATIONS NO. 85, KNOWN AS THE REVISED INTERNAL REVENUE FOREST PRODUCTS REGULATIONS.

To all Internal Revenue Officers and others concerned:

SECTION 1. Section 9 of Regulations No. 85 dated December 28, 1934, known as the Revised Internal Revenue Forest Products Regulations, is hereby amended to read as follows:

"SEC. 9. *Forest charges on minor forest products.*—In accordance with the provisions of section 269 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code (formerly 1516 of the Revised Administrative Code), imposing a charge of ten *per centum* on the market values of minor forest products and providing that the Collector of Internal Revenue and the Director of Forestry shall make a joint assessment of the market values of such products, the following joint assessment has been made. The amount of forest charges appearing in the last column shall be collected on the corresponding minor forest pro-

ducts without regard to their quality or to the municipality in which they are gathered or sold.

Products	Unit	Assessment	Forest charges
Charcoal	Cu. M.—	P20.00	P2.00
Daluru	Cu. M.—	3.00	.30
Stone or earth	Cu. M.—	1.00	.10
Clean Salago bark	100 K	7.00	.70
Manila copal, Almaciga	100 K	25.00	2.50
Manila elemi, pili	100 K	20.00	2.00
Gutta percha	100 K	70.00	7.00
Diliman and all other vines used for tying	100 K	50.00	5.00
Buri (dried & rolled in bundles)	100 K	10.00	1.00
Buri (green leaves attached to stem)	10 % of market price	2.00	.20
Dyewood (sibucan)	100 K	2.00	.20
Dyebark (nigue)	100 K	20.00	2.00
Tanbark (cascalotes) other than tangal	100 K	5.00	.50
Gogo bark	100 K	20.00	2.00
Cabo-negro	100 K	5.00	.50
Beeswax, refined	100 K	120.00	12.00
Beeswax	100 K	60.00	6.00
Kamagsa	100 K	6.00	.60
Hingiw	100 K	4.00	.40
Dipterocarp resin	100 K	10.00	1.00
Split rattan	100 K	50.00	5.00
Unsplit rattan (2 cm. or less in diameter)	1,000 lin. m.	20.00	2.00
Unsplit rattan (over 2 cm. in diameter)	1,000 lin. m.	50.00	5.00
Oleo resin (balao)	1 liter50	.05
Tree ferns	Whole tree	2.50	.25
Nipa leaves, 1,000 shingles of less than 1.5 m. in length	400 K	10.00	1.00
Nipa leaves, 1,000 shingles of 1.5 meters or over in length	700 K	20.00	2.00
Pine tree (Christmas)	1 linear m.	4.00	.40
Lumbang or baguilumbang nuts, unhusked	100 K	5.00	.50
Lumbang kernels from lumbang or baguilumbang nuts	100 K	10.00	1.00
Round table tops manufactured from buttresses of trees of 1st group:			
50 cm. in dia or less	1 table top	5.00	.50
100 cm. in dia. or less	1 table top	10.00	1.00
150 cm. in dia. or less	1 table top	20.00	2.00
over 150 cm. in dia.	1 table top	30.00	3.00
Round table tops manufactured from buttresses of trees of			

the 2nd group or lower groups:			
50 cm. in dia. or less 1 table top	2.50	.25	
100 cm. in dia. or less 1 table top	5.00	.50	
150 cm. in dia. or less 1 table top	10.00	1.00	
over 150 cm. in dia.			
or less 1 table top	15.00	1.50	
Boho 100 pcs.	5.00	.50	
Nipa sap 100 liters	.60	.06	
Buri fiber 1 kilo	5.00	.50	
Barks for cutch			
(green) 100 kilo	2.50	.25	
Barks for cutch (dry) 100 kilo	5.00	.50	
Anahao leaves or palma			
brava leaves 100 leaves	.50	.05	
Kanela or cinnamon 100 K	10% of the market value		
Bamboo from public forests 100 pcs.	30.00	3.00	
Tangal bark (for tuba drink) 100 K	15.00	1.50"	

SEC. 2. *Date of effectivity.*—This amendment shall take effect upon promulgation of the same in the *Official Gazette*.

PIO PEDROSA
Secretary of Finance

FERNANDO LOPEZ
*Secretary of Agriculture
and Natural Resources*

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

Concurred in:

SATURNINO DAVID
Collector of Internal Revenue

Department of Justice

ADMINISTRATIVE ORDER No. 1

January 2, 1951

AUTHORIZING JUDGE BIENVENIDO A. TAN, SEVENTH JUDICIAL DISTRICT, FIRST BRANCH, TO PRESIDE OVER THE SECOND BRANCH OF THE SAME JUDICIAL DISTRICT.

In the interest of the administration of justice, Administrative Order No. 149 of this Department, dated August 7, 1948, authorizing Judge Bienvenido A. Tan of the Court of First Instance of Rizal, Seventh Judicial District, First Branch, to preside over the Second Branch of the Court of First Instance of said Province at Rizal City (now Pasay City) is hereby revoked, effective as of January 15, 1951.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 2

January 3, 1951

TEMPORARILY DETAILING ASSISTANT PROVINCIAL FISCAL CELSO AVELINO OF SAMAR AS CITY ATTORNEY OF THE CITY OF CALBAYOG.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Celso Avelino, Assistant Provincial Fiscal of Samar, is hereby detailed for temporary duty to the City of Calbayog there to discharge the duties of City Attorney thereof, effective immediately and to continue during the absence of City Attorney Honorio Fulgencio of said city.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 3

January 2, 1951

AUTHORIZING CADASTRAL JUDGE MANUEL P. BARCELONA TO DECIDE IN MANILA CERTAIN CRIMINAL CASES.

In the interest of the administration of justice and upon the request of the Honorable Manuel P. Barcelona, Cadastral Judge, he is hereby authorized to decide in Manila criminal case No. 1168 "People vs. Pablo Angeles" and criminal case No. 718 "People vs. Simon Sakay"; and in Iloilo criminal cases Nos. 1055 and 717 entitled, "People vs. Daniel Ongyod" and "People vs. Maximo Pacheco", respectively, and civil case No. 420 entitled, "Leonisa Santos vs. Arturo Yuson" which are previously tried by him while holding court in the Province of Bulacan.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 4

January 8, 1951

AUTHORIZING JUDGE EMILIO RILLORAZA OF THE FIFTH JUDICIAL DISTRICT, FIRST BRANCH, TO DECIDE IN MANILA CERTAIN CRIMINAL AND CIVIL CASES.

In the interest of the administration of justice and pursuant to the request of Judge Emilio Rilloraza of the Fifth Judicial District, Pampanga, First Branch, he is hereby authorized to decide in Manila beginning January 9, 1951, the following cases which were tried by him and submitted for decision while presiding over the Court of First Instance of said province:

- Criminal case No. 833, "People vs. Aurelio Tolentino" for estafa;
- Civil case No. 201, "Eduardo Carlos et al. vs. Aniano Elayda et al."; and
- Civil case No. 175, "Mohamad Eusoop alias Mariano Eusoop vs. PICSPA Corporation."

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 5

*January 9, 1951***AUTHORIZING JUDGE-AT-LARGE TEODORO CAMACHO TO DECIDE IN JOLO, SULU, A CERTAIN REGISTRATION CASE.**

In the interest of the administration of justice and upon request of the Honorable Teodoro Camacho, Judge-at-Large, he is hereby authorized to decide in Jolo, Sulu, registration case No. 3243, G.L.R.O. record No. 55080, of Nueva Ecija, entitled, "Dionisia Narin et al." which was previously tried by him while holding court in said province.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 6

*January 10, 1951***DESIGNATING JUDGE HERMOGENES CALUAG AS CHAIRMAN OF THE DEPORTATION BOARD**

Pursuant to the provisions of Executive Order No. 398 dated January 5, 1951, of His Excellency, the President of the Philippines, Judge Hermogenes Caluag is hereby designated as chairman of the Deportation Board.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 7

*January 11, 1951***AUTHORIZING JUDGE PABLO VILLALOBOS, SIXTEENTH JUDICIAL DISTRICT, TO HOLD COURT IN BASILAN CITY.**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Pablo Villalobos, Judge of the Sixteenth Judicial District, Zamboanga City and Sulu, is hereby authorized to hold court in Basilan City beginning February 5, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 8

*January 12, 1951***DESIGNATING ASSISTANT PROVINCIAL FISCAL AMADO GADOR OF MISAMIS OCCIDENTAL AS ACTING CITY ATTORNEY OF OZAMIZ CITY.**

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Amado Gador, Assistant Provincial Fiscal of Misamis Occidental, is hereby designated Acting City Attorney of Ozamiz City in addition to his duties as assistant provincial fiscal,

effective January 16, 1951, and to continue during the absence on leave of the City Attorney thereof, without additional compensation.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 9

*January 22, 1951***TEMPORARILY DETAILING ACTING PROVINCIAL FISCAL RICARDO D. GARCIA OF MISAMIS OCCIDENTAL TO OZAMIZ CITY TO INVESTIGATE CERTAIN CRIMINAL CHARGES.**

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Ricardo D. Garcia, Acting Provincial Fiscal of Misamis Occidental, is hereby temporarily detailed to Ozamis City, there to investigate, in addition to his regular duties, the criminal charges and counter-charges between the city mayor and the chief of police of the city, with a view to filing such criminal action or actions as the facts brought out in his investigation may warrant.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 10

*January 20, 1951***AUTHORIZING JUDGE-AT-LARGE JOSE C. ZULUETA TO HOLD COURT IN THE PROVINCE OF LA UNION**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose C. Zulueta, Judge-at-Large, is hereby authorized to hold court, in the Province of La Union, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 11

*January 22, 1951***AUTHORIZING CADASTRAL JUDGE JUAN O. REYES TO HOLD COURT IN THE PROVINCE OF NEGROS ORIENTAL.**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Juan O. Reyes, Cadastral Judge, is hereby authorized to hold court in the Province of Negros Oriental, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein giving preference to cadastral cases.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 12

*January 23, 1951***AUTHORIZING JUDGE-AT-LARGE JULIO VILLAMOR TO HOLD COURT IN THE PROVINCE OF ALBAY**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Julio Villamor, Judge-at-Large, is hereby authorized to hold court in the Province of Albay, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 13

*January 23, 1951***AUTHORIZING CADASTRAL JUDGE FILOMENO IBAÑEZ TO HOLD COURT IN THE PROVINCES OF AGUSAN AND BUKIDNON.**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Filomeno Ibañez, Cadastral Judge, is hereby authorized to hold court in the Provinces of Agusan and Bukidnon, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 14

*January 23, 1951***AUTHORIZING CADASTRAL JUDGE JOSE BONTO TO HOLD COURT IN THE PROVINCES OF ILOCOS SUR AND ABRA.**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose Bonto, Cadastral Judge, is hereby authorized to hold court in the Provinces of Ilocos Sur and Abra, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 15

*January 27, 1951***AUTHORIZING CADASTRAL JUDGE ELADIO LEAÑO TO HOLD COURT IN THE PROVINCE OF BATAAN**

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Eladio Leaña, Cadastral Judge, is hereby authorized to hold court

in the Province of Bataan, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 16

*January 16, 1951***AUTHORIZING CADASTRAL JUDGE FRANCISCO ARCA TO DECIDE IN MANILA CERTAIN CASES AND FOR OTHER PURPOSES.**

In the interest of the administration of justice and pursuant to the request of the Honorable Francisco Arca, Cadastral Judge, he is hereby authorized to decide in Manila the four cases listed hereunder, and to resolve motion for reconsideration in cadastral cases Nos. 30 and 36, G.L.R.O. Nos. 1329 and 1277, respectively, which were previously tried by him while holding court in Pampanga:

1. Criminal case No. 1000 *vs.* Clemente Regala et al. for serious physical injuries;
2. Special civil case No. 337—"Victorio D. Santos, petitioner, *vs.* Macario Mendoza Rosa et als. respondents" for prohibition;
3. Special civil case No. 338—"Victorio D. Santos, petitioner, *vs.* Jose N. Layug, respondent" for mandamus; and
4. Civil case No. 48—"Pedro Catala, plaintiff, *vs.* Silvestra Canlas, defendant" for recovery of possession.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 17

*January 5, 1951***DESIGNATING SPECIAL ATTORNEY PEDRO C. QUINTO IN THE OFFICE OF THE SOLICITOR GENERAL ACTING CITY ATTORNEY OF QUEZON CITY.**

In the interest of the public service, and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Pedro C. Quinto, Special Attorney in the Office of the Solicitor General, is hereby designated acting City Attorney of Quezon City for the purpose of investigating and prosecuting the case against Elizabeth R. Wilson et al.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 19

*January 25, 1951***FURTHER AMENDING ADMINISTRATIVE ORDER No. 169, AS AMENDED**

Administrative Order No. 169 of this Department, dated September 17, 1948, as amended by Administrative Orders Nos. 220, 136 and 151, dated Decem-

ber 7, 1948, October 18, 1950 and November 7, 1950, respectively, is hereby further amended insofar as the Third Branch of the Court of First Instance of Leyte is concerned so as to read as follows:

"The Judge presiding over the Third Branch, with station in Baybay, shall take cognizance of the cases coming from Baybay, Albuera, Inopacan, Hindang, Hilongos, Bato, Matalom, Abuyog, MacArthur, Merida, Isabel, Palompon, Villaba, San Isidro, La Paz and Tabango; provided, however, that whenever the interest of the administration of justice so requires, any judge of the three branches of the Court of First Instance of Leyte may try any case coming from any municipality, with the previous approval of this Department."

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 21

January 30, 1951

INSTRUCTING PROVINCIAL FISCAL DIOSDADO BACOLOD OF MISAMIS OCCIDENTAL TO RETURN TO HIS OFFICIAL STATION FROM TEMPORARY DETAIL IN SURIGAO.

In the interest of the public service, Mr. Diosdado Bacolod, Provincial Fiscal of Misamis Occidental, who has been temporarily detailed to the Province of Surigao, is hereby instructed to return, to Misamis Occidental, his official station. This confirms the verbal order given to Fiscal Bacolod in Dipolog.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 22

January 30, 1951

INSTRUCTING PROVINCIAL FISCAL RICARDO D. GARCIA OF SURIGAO TO RETURN TO HIS OFFICIAL STATION FROM TEMPORARY DETAIL TO MISAMIS OCCIDENTAL AND OZAMIZ CITY.

In the interest of the public service, Mr. Ricardo D. Garcia, Provincial Fiscal of Surigao, who has been temporarily detailed to the Province of Misamis Occidental and Ozamiz City, is hereby instructed to return to Surigao, his official station. This confirms the verbal order given to Fiscal Garcia in Dipolog.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 23

January 30, 1951

TEMPORARILY DETAILING PROVINCIAL FISCAL DIOSDADO BACOLOD OF MISAMIS OCCIDENTAL TO OZAMIZ CITY IN ADDITION TO HIS REGULAR DUTIES.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Diosdado Bacolod, Provincial Fiscal of Misamis Occidental, is hereby temporarily detailed to Ozamiz City, there to investigate, in addition to his regular duties, the criminal charges and counter-charges between the city mayor and the chief of police of the city, with a view to filing such criminal action or actions as the facts brought out in his investigation may warrant.

JOSE P. BENGZON
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments confirmed by the Commission on Appointments of the Congress of the Philippines:

December 21, 1950

Hon. Damaso V. Abeleda, Provincial Governor, and Dr. Felix Gabriel and Dr. Germiniano Valbuena, Members of the Provincial Board of Mindoro Occidental.

Hon. Beto Ali, Mayor, Mangorangka Mao, Vice-Mayor, and Pango Tomawis, Mama Minor and Olo Bakarar, Members of the City Council of the City of Dansalan.

Mamitua Saber as City Secretary of the City of Dansalan.

Exequiel D. Trinidad, Chief of the Fire Department of the City of Cabanatuan.

Saturnino Liston, Assistant Chief of the Fire Department of Cebu City.

Saturnino David, Collector, and Silverio Blaquera, Deputy Collector of Internal Revenue.

Alfredo V. Jacinto as Commissioner of Customs.

Manuel Cudiamat as Provincial Treasurer of Mindoro Occidental.

Meno B. Tuason as Member of the Board of Tax Appeals of Abra.

Simeon Damian, Chairman, and Manuel V. Zabata and Felix C. Codilla, Members of the Board of Tax Appeals of the City of Iloilo.

Hon. Fernando Jugo and Hon. Felix Bautista Angelo as Associate Justices of the Supreme Court of the Philippines.

Hon. Pompeyo Diaz as Solicitor General of the Philippines.

Hon. Tiburcio Tancinco as Judge of the Sixth Judicial District, Manila, Branch VIII.

Alfonso Adora as Provincial Fiscal of Mindoro Occidental.

Hon. Luis J. Torres and Mrs. Pilar Hidalgo-Lim, Members of the Board on Pardons and Parole.

Demetrio Benitez, Justice of the Peace of Dansalan City; Melcio Bongolan of Urdaneta, Pangasinan; Ernesto Calzado (Auxiliary) of Gajidiocan, San Fernando and Magdiwang, Romblon; Felix D. Soriano (Auxiliary) of Urdaneta, Pangasinan.

Clemente Mojica, Member of the Board on Pensions for Veterans.

Dr. Jose Rivera, City Health Officer of the City of Cagayan de Oro.

Hon. Bibiano L. Meer as Undersecretary of Commerce and Industry.

Antonio Mejia, Chief of the Cooperatives Administration Office.

Bonifacio Quiaoit, Assistant Chief of the Cooperatives Administration Office.

Hon. Placido L. Mapa, Chairman of the Board of Governors of the Rehabilitation Finance Corporation.

Hon. Salvador Araneta, Member of the National Economic Council.

Manuel Felizardo, Member of the National Power Board for a certain term.

Benigno Zialcita Jr. and Mrs. Maria Kalaw Katigbak, Members of the Import Control Board.

Ramon Araneta as Member of the Price Administration Board.

Hon. Jorge B. Vargas, Chairman, and Hon. Pio Joven and Jose Paez, Members of the National Planning Commission.

Juan M. Arellano as Director of Planning.

January 6, 1951

Irineo R. Cabatit, Vice-Consul of the Republic of the Philippines.

Hon. Horacio Rodriguez as Mayor of the City of Cavite.

Luis Sianghio, Vice-Mayor, and Adolfo Eufemio, Ponciano S. Reyes, Francisco P. Batacan, Jesus V. Merritt, Dr. Jose P. Cruz and Dr. Delfin Garcia, Councilors of the City Council of Quezon City.

Filemon F. Busa as Chief of Police of the City of Butuan.

Gaudioso Villegas as Chief of the Fire Department of Quezon City.

Hon. Sotero Baluyut as Secretary of Public Works and Communications.

Hon. Sixto B. Ortiz as Undersecretary of Finance.

Hon. Ceferino de los Santos as Undersecretary of Justice.

Hon. Alejo Labrador as Presiding Justice of the Court of Appeals.

Hon. Emilio Peña as Associate Justice of the Court of Appeals.

Hon. Vicente de la Cruz as Commissioner of Immigration.

Pat. Rebueno as chairman of the Board of Tax Appeals of Ilocos Sur.

Lamberto Abuton and Francisco B. Alfajardo as members of the Board of Tax Appeals of Misamis Occidental.

Nicanor Sarmiento and Santiago C. Magbuhad as members of the Board of Tax Appeals of Quezon.

Mauro Rosario as Chairman of the Board of Tax Appeals of Samar.

Tomas de Vera as Chairman of the Board of Tax Appeals of the City of Manila; and Vicente Rufino, Jose V. Ramirez, C. A. Gonzales, Rosendo Subido, Simeon Francisco, and Fernando Ocampo as members.

Hon. Primitivo Gonzales as Judge of the Second Judicial District, La Union.

Hon. Edilberto Barot as Judge of the First Judicial District, Pampanga, Branch I.

Hon. Roberto Gianzon as Judge of the Fifth Judicial District, Bulacan, Branch II.

Hon. Francisco Jose and Hon. Oscar Castelo as Judges of the Sixth Judicial District, Manila, Branches II and IV, respectively.

Hon. Hermogenes Caluag and Hon. Emilio Rillo-raza as Judges of the Seventh Judicial District, Rizal, Branches III and II, respectively.

Hon. Luis Ortega as Judge of the Eighth Judicial District, Laguna, Branch II.

Hon. Jose Querubin as Judge of the Eleventh Judicial District, Capiz, Branch II.

Hon. Segundo Moscoso and Hon. Jose S. Rodriguez as Judges of the Thirteenth Judicial District, Leyte, Branches I and III, respectively.

Hon. Hipolito Alo as Judge of the Fourteenth Judicial District, Bohol.

Hon. Francisco Arca as Judge of the Fifteenth Judicial District, Surigao and Agusan.

Hon. Jose P. Veluz as Judge of the Fifteenth Judicial District, Misamis Oriental and Bukidnon.

Hon. Fidel Villanueva, Hon. Julio Villamor, Hon. Manuel P. Barcelona, and Hon. Jose C. Zulueta as Judges-at-Large.

Hon. Juan O. Reyes, Hon. Jose Bonto, Hon. Filemon Ibañez, Hon. Eladio Leño, Hon. Sulpicio V. Cea, and Hon. Segundo Apostol as Cadastral Judges.

Hon. Cornelio Balmaceda as Chairman of the Price Administration Board.

Gregorio N. Garcia as Municipal Judge of the City of Manila.

Nestor Alampay as Assistant Provincial Fiscal of Laguna.

Jose Padilla and Leonidas Lombos as Third Assistant City Attorneys of Quezon City.

Pedro Baltazar as Register of Deeds of Pampanga.

Jose U. Tenazas as Justice of the Peace of Malay, Capiz.

Diosdado Reloj as Justice of the Peace of Malinao, Capiz.

Bienvenido S. Noveno as Justice of the Peace of Buluan, Cotabato.

Antonio V. Repollo as Justice of the Peace of Glan, Cotabato.

Marcelo S. Mallari as Justice of the Peace of Dulawan, Cotabato.

Edmundo Jacinto as Justice of the Peace of Kapalong, Davao.

Julio Arzadon as Justice of the Peace of Piddig and Carasi, Ilocos Norte.

Agapito Fuellas as Justice of the Peace of Saguian, Bubong, Ditsaan, and Sungod, Lanao.

Eugenio Arguelles as Justice of the Peace of Carigara, Leyte.

Tirzo Joson as Justice of the Peace of Tunga, Leyte.

Dominador Mondragon as Justice of the Peace of Alangalong, Leyte.

Apolonio Balboa as Justice of the Peace of Maria Aragon, Quezon.

Virgilio Layno as Justice of the Peace of Dianga, Surigao.

Angel Babiera as Justice of the Peace of Ipil, Zamboanga.

Pastor B. Quiachon as Justice of the Peace of Dinan, Zamboanga.

Domiciano B. de Jesus as City Engineer of the City of Butuan.

Bonifacio A. Quiaoit as Director of Commerce.

Benjamin T. Ligot as Assistant Chief of the Cooperatives Administration Office.

Ad interim appointments to be confirmed by the Commission on Appointments:

Luis Lichauco as Chairman of the Board of Directors of the Land Settlement Development Corporation; and Eugenio Baltao, Mrs. Yay Marking, Mariano C. Atega, Juan Ledesma, Ludovico Hidrosollo, and Marcelo Adduru as Members.

Col. Amado N. Bautista as Chairman of the Board of Directors of the National Shipyards and Steel Corporation; and Gonzalo Abaya, Sergio Osmeña, Jr., Felix Padilla, Gregorio Zara, Hermenegildo B. Reyes, and Filemon C. Rodriguez as Members.

Ramon V. del Rosario as Member of the Board of Directors of the Price Stabilization Corporation.

Appointments and Designations

Hon. Felino Neri as Acting Secretary of Foreign Affairs.

Antonio L. Arizabal as Member of the Philippine Information Council.

Arsenio T. Bonifacio as Acting Provincial Treasurer of Rizal.

Julio A. Reyes as Acting City Engineer of the City of Dansalan.

Gen. Emilio Aguinaldo as Acting Chairman of the Board of Pensions for Veterans; and Mariano Yenka, Antonio Buenaventura, and Isidro Wenceslao as Acting Members.

Luis Montilla, Dr. Jose P. Bantug, Dr. Vidal Tan, Dr. Eufonio Alip, Juan F. Nakpil, and Dr. Encarnacion Alzona as Members of the Philippine Historical Committee.

Dr. Pablo C. Feliciano, Dr. Antonio Sabater, and Dr. Nemesio G. Garcia as Members of the Board of Optical Examiners.

Elias L. Ruiz as Chairman of the Board of Examiners for Architects; and Rufino D. Antonio and Federico S. Illustre as Members.

Municipal Officials

Gaudencio Fineza, Vice Mayor of Paluan, Mindoro Occidental, January 5, 1951.

Bernardino Suarez, Vice Mayor; Victorino Vela and Pio Salome, Councilors of Pangniban, Catanduanes, January 8, 1951.

Cipriano Pelayo, Councilor of Bogo, Cebu, January 8, 1951.

Antonio Celvezon, Councilor of Guimbal, Iloilo, January 8, 1951.

Pedro Dionela, Councilor of Prieto Diaz, Sorsogon, January 8, 1951.

Rafael A. Rabago, Vice Mayor, Simeon Bautista, Councilor of Alaminos, Pangasinan, January 8, 1951.

Bernardo Licup, Vice Mayor; Rosalio Bonagua, Miguel Zepeda, and Gregorio Pusing, Councilors of Aroroy, Masbate, January 10, 1951.

Maginoo Serrano, Councilor of Uson, Masbate, January 10, 1951.

Dionisio Gapol, Vice Mayor of Siquijor, Negros Oriental, January 11, 1951.

Marcelo Padilla, Mayor of San Agustin, Isabela, January 11, 1951.

Alfonso Catigbe, Councilor of Tubod, Lanao, January 11, 1951.

Plaridel Medija, Mayor; Alberto F. Cancencia, Vice Mayor; Primitivo Magallanes, Serbulo Campechenio, Luis Capili, and Cornelio Butanes, Councilors of Rizal, Zamboanga, January 15, 1951.

Simplicio Magino, Vice Mayor; Agusan Barabag, Amdo Lim, Policarpio Gregorio, Loreto Alonzo, and Maguindura Gurang, Councilors of Lupen, Davao, January 16, 1951.

Melchor Ordoñez, Councilor of Laur, Nueva Ecija, January 20, 1951.

Simplicio Zabala, Councilor of Basud, Camarines Norte, January 20, 1951.

Magno Ybañez, Councilor of Catarman, Misamis Oriental, December 21, 1950.

Angelico Basundol, Councilor of Lazi, Negros Oriental, December 21, 1950.

Modesto Carmen, Councilor of Bisling, Surigao, December 21, 1950.

Gregorio Abella, Councilor of Lola, Lanao, November 21, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Speech of His Excellency Elpidio Quirino, President of the Philippines, before the first annual meeting of Supreme Council of Scottish Rite of Freemasons in the Philippines, January 11, 1951:

I come here gladly as a member of the general brotherhood of man under the fatherhood of a Supreme Being. I have no higher claim. As such I appreciate the occasion to extend to you the sincere fraternal greetings of one who believes with you that "he who is in the light, and hateth his brother, remaineth still in darkness," and who recognizes in you a body "composed of honorable men, free and independent, who are observers of the Constitution and laws of the country" and whose basic belief is "in God and the immortality of the soul; its object, the propagation of the truth in all its manifestations; its test, eternal progress; its torch, reason tempered by faith; its crowning gospel, liberty of conscience; its apocalypse, toleration; its end, the love of humanity; its motto, Liberty and Fraternity."

The mystic history of your organization presents the paradox of courage, enterprise, and vitality wherever men are subject to tyranny and are denied truth, freedom, and justice. It has been prescribed as the enemy of many a despotism, and is thus strengthened and distinguished by the persecutions it has faced for standing for human dignity and individual liberty.

As you all know, the Philippines, in common with the rest of the world is facing a crisis, a crisis that holds our freedom as a people and the fate of civilization itself in the balance. I have yet to know of any group of individuals in a better position to realize and appreciate the gravity of this crisis in relation to the future of our nation than you who are listening to me tonight.

You are witnesses to a great struggle to raise an order that can assure our people the substance and reality promised by our ideals of freedom, justice, and human dignity. And as the world crisis deepens, you and I, all of us, are brought face to face once again with the issue of survival itself.

By your precept, you recognize it as your duty to assist in elevating the moral and intellectual level of society, in coining knowledge, bringing ideas into circulation, and causing the mind of youth to grow, and in putting, gradually, by the teaching of axioms and the promulgation of positive laws, the human race in harmony with its destinies.

I am sure that you can muster the vision and wisdom to translate that duty in terms of your personal responsibilities and national anxieties. We need unity here. We

need goodwill, courage, confidence. We need the will to face our difficulties together and to make our contribution to their solution. Above all, we need a stronger sense of sacrifice, realizing that we have to yield many of our material advantages individually and collectively in order to preserve our prized liberties and insure our very survival.

Our greatest danger today lies in the apathy, the inertia, the plain sloth engendered by the selfishness, negativism, and partisanship peculiar to our own times. Thus a creeping paralysis of will coupled with moral and spiritual sterility threatens to sweep us. Nothing can be more convenient to the dark forces actively engaged in our midst to destroy our free institutions and promote the confusion needed to institute their new slavery.

I feel that our problems of government, though highly practical and material, are basically ethical and call for a deep moral stiffening of the national fiber. If we *will* what is honest and right, we will *do* the right, and that firm will must imbue the whole population as well as our leadership.

The ideals and principles that you uphold are in their essence the ideals and principles of Democracy. They are the ideals and principles we must uphold if the Philippines is to remain a democracy. They are the ideals and principles directly challenged in the world today by communism.

I see in you a powerful democratic and liberal agency which stands naturally and unalterably opposed to the new tyranny threatening our country.

I am equally persuaded that in the bigger, more inclusive brotherhood that is democracy, under its sanctions derived from the unsearchable wealth of our Christian heritage, we find the only authentic opportunity for any free communion to exist in complete dedication to the cultivation of conscience which creates human dignity and sets the pace of man towards unlimited victories of the spirit.

We have in this country of ours, after the sacrifices of our fathers and predecessors, the means to strengthen this democracy. We have it in the moral and spiritual resources they developed and left us, in the capacity we have to conquer what is low, narrow, selfish, vain and grasping in our souls, in the ability to discipline our appetites and seek their sublimation on higher levels of self-denial, humility, and service.

We have it in the opportunities to achieve all this, not by the dictate of a tyrant set over us but by force of an inner compulsion of conscience that makes for individual distinction. And we have it in the freedom to assume responsibility in response to the challenge to contribute to the common welfare above considerations of self, special group or party.

To the extent that we succeed in this direction, in our personal and collective efforts, we strengthen the brotherhood of our special and our common affiliation, we strengthen democracy and insure its survival. At the same time, we substantially contribute to the positive efforts of all men of faith and good will elsewhere, outside our borders, to preserve peace and advance human liberty.

We are due for greater progress, but this will not be automatic; it will require effort, impose dedication, and utilize the cumulative wisdom born of a long struggle for moral and spiritual conquests in the march towards the perfection of a universal brotherhood of man.

I cannot think of anything more appropriate than to appeal to you as individuals and as a brotherhood to help create here in our midst the moral and spiritual climate conducive to good will, trust, and unity.

Twenty-seventh monthly radio chat of His Excellency Elpidio Quirino, President of the Philippines, broadcast from Malacañan Palace on a nation-wide hookup, January 15, 1951:

Fellow Countrymen:

Departing from the usual tone of my radio chats, I shall not tax you with a monotonous repetition of the daily problems weighing heavily upon our shoulders. I come to you tonight addressing myself to your inner being.

Two weeks ago we started the new year with all manner of resolutions. Today, I feel impelled to call upon you to strengthen the faith and the determination that then informed our deepest wishes and most sanguine resolutions.

We have many things to do and *must do* for the moment and throughout the year, to keep our country safe from destruction. The Government is doing all it can to anticipate contingencies in the days ahead. But the best and the most that the government can and will do, will not suffice to carry us through. It cannot take the place of what every one of our people must do in self-help and in contribution to the common effort for national survival.

Because of the steady and continuing alarm to which we all are being subjected, there is a temptation to take things for granted and to be lulled into a false sense of security in the apparent absence of extra sensational developments. Or rather, because developments follow in too rapid a succession to lend themselves to extra-sensational treatment and to permit of a dramatic impact upon our consciousness, we grow insensitive to our peril and the urgency to action is lost upon us.

It is easy to be confused. So blunted have become the sensibilities of many people that they cannot recognize the existence of facts that have not touched them personally. They refuse to catch up with events. The belief grows

that where nothing apparently seems to have developed as predicted, there is a chance that nothing can happen at all.

This reminds me of the sad experience in my family during the last war. We evacuated to Santa Maria, Bulacan, when the Japanese were about to enter Manila. We thought that the Japanese were going to destroy the city and ravage the population. Since they did not do it as we expected, when the Americans were about to reconquer the city we thought that the American forces, being our brothers in arms, would not destroy the city which the Japanese themselves had preserved, and we remained in the city confident that we would surely be saved. And what happened? Because of the exigencies of the war our homes were destroyed and almost all the members of my family were massacred by the Japanese.

Thus in the face of the present crisis, the popular attitude is that since it has been possible to manage muddling along during the last few weeks, the chances are that the country may muddle through. Even worse, some people who usually make good business during adversity expect to make better business and even thrive during the impending greater adversity to our people and to the whole world. They still expect to survive when everybody is threatened with annihilation, as if their fate will be of their own choosing.

I submit that this is not the way men and nations throughout the earth feel today and expect to evolve into greatness. Somewhere along the way, a people must strike out from the well-worn accustomed groove and expend more effort and will to follow something higher and more rugged to secure safety and broader vistas of fulfillment. They must graduate from instinct to intelligence and spirit.

In the past, we achieved what progress we did in liberty and well-being by force of circumstances imposed upon us. Deprived of freedom, we saw our imperative need and struggled to win it. Impoverished by oppression, we bestirred ourselves and broke the agelong shackles that stood in the way of our welfare.

We now enjoy liberty and freedom. We have our own civilization. Our new way of life has become dear to us. We cherish our established institutions. But today, all these are threatened. If we are to preserve them, if we are to move further, we must feel the compulsion of a moral duty and a higher authority, one that must develop within ourselves, that is, the small still voice of God within us. The other name for it is individual conscience.

And now we ask ourselves: How much conscience have we that operates in the performance of our responsibilities

as individuals, in the pursuit of our duties and obligations as citizens of this free country?

The question is pertinent to the kind of strength we need today to save us from disintegration within and from conquest from without. It is pertinent to the morale that we need to stand our ground and keep our cherished free institutions from wanton destruction by a rising new tyranny.

We need the spirit of that conscience in the deepening crisis, in the present domestic and world situation. If we are to stand as one man to stave disaster and effect our survival, we must muster the conscience that gives support to our deepest loyalty, the conscience that alone can exercise the selfishness, the hate, the partisanship, the pettiness that divide us and weaken us for the purposes and convenience of our common enemy.

Love of country remains an empty abstraction where it finds no adequate expression among the people who inhabit it. We cannot love a country that is full of hate, full of suspicion, full of malice. We cannot profess love of country if we foment these feelings ourselves. How can you expect our boys in the icy ravines of Korea to pull together and work together in common resistance with the forces of the democratic world to the hostile forces beating at their gates, when their country is not worth loving and fighting for? What inspiration, what encouragement can we give to our soldiers now in the fields, in the mountains of Bulacan, in Laguna, in Tarlac, in Nueva Ecija, and elsewhere, exposing their lives to protect the innocent women and children and the helpless inhabitants from the forces of hate and destruction, if we abet or defend the latter in their wanton acts of cruelty and subversion?

Love of country requires solidarity. We reduce that love into incompetence and impotence where we have to maintain irreconcilable conceptions of what is good for that country. Sectional pride, partisan feeling, past bitterness constantly undermine our understanding and solidarity.

As we prepare for war of defense—and don't deceive yourselves, we *are* in actual war for internal security—we have to seek first that moral strength rooted in a developed conscience, the strength that is best expressed in the unity of the people in support of our forces. Nothing contributes more to heaviness of spirit and despair than the unending articulations of suspicion, of ill-wishing, and hatred among ourselves, the continuous cultivation of bitterness between brother and brother.

It is time we graduated from all this. It is time we took a serious pause from our careless dissipation of the moral resources which the sacrifices of preceding generations have left to us.

All our measures to make an armed defense of our land, all our efforts to stockpile prime necessities, all our attempts to anticipate the many physical hardships that attend a bitter and bloody war, can avail us nothing without a re-strengthening of our moral and spiritual sinews, without a revival of a new integrity of spirit, without a richly nourished conscience that can distinguish between the call of self and the call of neighbor, between the call of party and the call of country, between the call of ambition and the call of humanity.

Our right to liberty is not affirmed by wordy protestations of loyalty. Our capacity for liberty is not established by cynical presumption of authority or even by supremacy of superior intelligence of whoever has the biggest word, the biggest head, or the heaviest club. That right is affirmed and that capacity established by self-sacrifice and self-discipline on the part of men and women who make a point of conscience to demonstrate human dignity as the highest flowering of freedom.

In the crisis that we, in common with the rest of humanity, face today, the ultimate protection and preservation of our cherished liberty and our survival itself must depend on the quality of our spirit—of faith, love, and loyalty to our country, of self-sacrifice or selfishness and solidarity. I know of no other basis. I know as you know that we have no other answer.

Message of His Excellency Elpidio Quirino, President of the Philippines, on the State of the Nation, delivered at the joint session of the Congress, January 22, 1951:

MR. PRESIDENT, MR. SPEAKER,
MEMBERS OF THE CONGRESS:

I join you today in opening your greatest opportunity yet to make history for our people. This is a year exceptionally heavy with decision and destiny; and your actions in this your second regular session may spell the difference between irreparable disaster and survival to our country.

I appreciate the earnest response of the Congress to the urgent call of action on the tax legislation program submitted in the last two special sessions which I had called for the purpose. I am gratified by the thoroughness with which you have discussed the individual tax measures. I am happy that you have passed the military appropriation bill to provide means for immediate strengthening of our fighting units for internal security.

The solid action of both houses in approving a concurrent resolution expressing the policy of this Government to give

preferential and serious consideration to the main recommendations of the U. S. Economic Survey Mission to accelerate social reform and economic development, and strengthen free and democratic institutions, is an earnest of our determination to do our part to earn American assistance under the Economic Cooperation Administration.

It is understandable that all these measures cannot be approved in the twinkling of an eye; they involve our capacity not only to shoulder immediate additional tax burdens but also a long-range program of fiscal rehabilitation and financial stability. But the necessity to provide for our imperative needs in the present world crisis presses, as the untoward effects of their neglect mount daily in proportion and importance. Therefore, it is my sincere hope that special efforts will be exerted to carry out our program without much delay.

I refer especially to those measures designed to bolster our security from within and ward off danger from without. Of course, it will be next to impossible to provide for a complete program of national defense with our limited resources alone. We need a goodly measure of outside assistance from friends and allies, particularly the United States; and, to deserve that, we must show beyond cavil that we have the spirit and the will to help ourselves.

Our preparations for defense are not for our own survival alone. We are no less participating directly in the implementation of a world issue, doing our proportionate share in the world effort to preserve peace and freedom for all. Our earnest efforts, therefore, to provide for our own security under the present circumstances become a vital part of our contribution to world security.

On the occasion of your three special sessions called after your last regular session I reported to you, and in my radio chats every fifteenth of the month, to the people, on the state of the nation. And as close and constant observers of world developments, you bear witness to such a succession of events as to keep you well apprised not only of the state of the nation but of the world situation. It is, therefore, superfluous to repeat in this message, which I intended to be brief, all the problems that have been and are facing us, or to enumerate in detail the unfinished work requiring our common action. I shall, therefore, mention only the outstanding and most pressing ones.

PUBLIC HEALTH

I shall begin with the health of our citizenry. The state of health of the nation is satisfactory, but there is much room for improvement. Many of our people do not drink clean water and it is extremely costly to construct water systems during these days of financial stringency. There should be

more artesian wells in cities and municipalities, especially in the barrios.

The country needs more hospitals and clinics.

Greater impetus should be given to the campaign against malaria, tuberculosis, and malnutrition. We should produce more vaccines and sera and other biological products and antibiotics.

SOCIAL WELFARE

The merging of the Social Welfare Commission and the PACSA into the Social Welfare Administration has been conceived in order to coordinate and concentrate our attention and better promote the welfare of the less privileged class of our population. With the reorganization thus effected, I am sure we will further improve the social welfare services.

More social reforms are due to enable the landless to own their lands, earn their livelihood, and enjoy a higher standard of living. It is never enough to promise social justice. Our most effective answer to Communism is a genuine strengthening of our national social program for the definite and positive improvement of the people's welfare.

Our immediate need is to provide adequate wherewithal to carry out our social amelioration program. The reduction of our appropriation for this purpose last year has greatly handicapped our relief and assistance to the needy.

LABOR

I trust that you will act upon the pending minimum wage bill. We want no regions or industries in the Philippines to fatten on underpaid labor.

The Conventions and Recommendations under the International Labor Organization to which the Philippines is a party should be ratified. They deal with the means of protecting our workers and promoting industrial harmony. They embody the most notable experiences of practically all the countries of the world, and provide us with a highly dependable guide for constructive social and labor legislation. Both the Workmen's Compensation Act and the Woman and Child Labor Law, and other laws, parts of which have become obsolete, must also be revised to make them more responsive to the present needs of our people.

PUBLIC EDUCATION

Despite limited finances, we have been able to accommodate all the children seeking admission in the public schools. But mere admission is not enough. We must provide a type of education adequate to produce constructive, honest, efficient, disciplined, and loyal citizens.

In the reorganization of the Department of Education, I emphasized the necessity of giving more impetus to voca-

tional training. It is my hope that by a proper revision of our educational laws, coupled with adequate funds and adjustment in the curriculum, our millions of students in our public schools alone could be made to produce many of the things that we need today and not wait for the full development of their potentiality.

ADMINISTRATION OF JUSTICE

We have revitalized the judiciary by appointing men of proven ability and integrity, and by imposing a more expeditious disposition of court cases. In the face of threats posed by unscrupulous elements, our courts have acted positively and courageously in cases prejudicial to the general welfare and security. But we need more judges of first instance to cope with the increasing work. We need also more severe measures to implement our determination to have the laws safeguarding the life and health of our citizenry enforced.

PUBLIC WORKS AND COMMUNICATIONS

With the help of the U. S. Government under the Rehabilitation Act and with our own appropriations, a total of 1,012.7 kilometers of new roads was added last year to our highway system. Four new bridges were constructed and 321 bridges reconstructed. Six new irrigation systems with a total of 23,000 hectares to be served were built. Under construction are seven major irrigation projects covering a total area of 20,200 hectares. We have maintained 14 irrigation systems already serving 83,600 hectares.

It is necessary, however, that we provide for more urgent projects such as irrigation, waterworks, artesian wells, roads, and bridges. The construction of a network of roads in Mindanao must be accelerated in order to give impetus to the agricultural and industrial development of this fertile region. Funds should be made available for the establishment there of a more extensive and efficient telecommunication system.

AGRICULTURE

In spite of our efforts to rehabilitate our badly damaged agriculture, we still have plenty to do in order to attain our goal. The production of copra, lumber, and others has been brought to prewar level, but our output of sugar, abaca, tobacco, and gold among others has remained below that of 1941. We should accelerate and increase production. We must make our country self-sufficient in food and other essentials. We should produce not only what we actually need but what we shall need in the impending greater emergency.

We should set aside more funds to hasten the subdivision of public lands and to expedite the necessary surveys needed for the issuance of titles.

COMMERCE AND INDUSTRY

The application of trade controls to meet the existing emergency has resulted in the recessive trend of trade in the country. However, we have been able to improve the position of our foreign trade. Our unfavorable trade balance during the 11 months of 1950 amounted to over P28.8 million only as against P547.1 million for the same period in 1949.

Present precarious conditions demand the continuance for the time being of economic control measures and their improvement. At the same time appropriate measures should be taken to control exports and prevent the exportation of essential commodities and critical materials needed for construction and national defense.

Measures have been taken to stockpile essential commodities, to lessen the curtailment of imports of equipment and materials for agriculture and industry, and to allow the unlimited import of foodstuffs. The control of prices must be made more effective everywhere. To this end, certain amendments to the Price Control Law are necessary.

Owing to the control of imports, 60 cigarette factories and seven nail factories, among others, have been established. To prevent overcrowding of new industries, a system of licensing of new industries should be adopted.

GOVERNMENT REORGANIZATION

I am submitting today the final executive acts to complete the reorganization of the Executive Department, under the authority granted by the Congress in Act No. 422. I take this occasion to express my appreciation for the conscientious work undertaken by the Reorganization Commission, headed by Minister Ramón Fernández, which greatly helped me in this major work of government reorganization.

While few radical changes have been made due to the present political development of the country and the social and economic repercussions that a drastic reorganization entails, it must be stated that the prime objectives of efficiency, simplicity, and economy have weighed heavily in the determination of the changes effected.

In the Executive Department alone, we have been able to effect economies estimated at P5,000,000 in the present budget. A major portion of the savings, however, will be utilized to pay the gratuities of officers and employees whose positions have been abolished. But the yearly saving of P5,000,000 hereafter is awaited.

In the reorganization of government-owned and controlled corporations, it is estimated that a savings of P7,000,000 will

also be effected. The discontinuation of enterprises which have been incurring substantial recurrent losses in the past years and the recasting and coordination of the activities for greater efficiency and economy of the corporations that remain, will likewise add to the estimated saving of P7,000,000 by the reorganization of the other entities.

All in all, therefore, an estimated yearly saving of P12,000,000 has been effected due to the reorganization. But this is not the limit. It is my hope that, with a more detailed study of the changes which have been started, the Congress may yet make judicious changes in several branches of the government in order to reduce the overhead expenses of administration.

With combined assets estimated at over P1.2 billion, the government-owned and controlled enterprises, have been reduced from 23 to 13, but will continue to exert decisive influence in various parts of the Philippine economy. It is gratifying to note the readiness with which private leaders of industry have responded, making themselves available in the cooperative work of coordinating public and private enterprises.

But the present government agencies assigned to implement the economic rehabilitation and development program are not structurally patterned to meet emergency situations. They do not possess adequate power and authority in themselves, separately, to cope with the new situation. Thus, I have appointed an Economic Mobilization Committee composed of members of the Cabinet and of the Congress and economic leaders outside the government to study the advisability of centralized direction and control over the economic forces of the country that should be concentrated and coordinated to assure that changing conditions may be met promptly and effectively.

NATIONAL ECONOMY

Philippine economy made great strides last year. Through the efforts of the government and our people, the nation's economy is again on the upgrade. Much still remains to be done. Our development program must be pushed through with vigor.

Last year the Philippines achieved a favorable balance in international payments of \$85.4 million as against a deficit of \$161 million in 1949. However, dollar receipts in 1951 are expected to be much less due to the termination of U. S. war damage payments.

I am gratified to observe the determination of the Congress to follow up our commitments for the implementation of our understanding with the United States leading to financial assistance under the ECA. But I must state that our tax program is not predicated merely on our desire to do our part in furtherance of said commitments. We have to pro-

vide for our most critical and urgent necessities. In fact, if we have to adequately meet our imperative needs, we must have an income more than the goal of P565 million envisaged in that understanding. But I know the capacity of our people. I would not be a party to bleeding them to inanition. Nevertheless, we must all make a sacrifice, not merely to meet ECA requirements but to insure our own good and safety. With the approval of our pending tax program, both can be substantially accomplished.

I realize that the tax bills are not popular, for taxes are seldom popular, if at all. They are, however, of absolute necessity now. There is no longer any other source for needed public funds. The borrowing capacity of our Government is limited. We cannot justifiably look always to the United States to meet our budgetary requirements. This Government cannot be delivered to the Treasury of the United States. We need additional revenues to carry out more effectively our peace and order drive, to educate our children, to protect our people against epidemics, to provide for our national defense, and even for the normal functions of government alone. And certainly, we need additional revenues to finance and accelerate the implementation of our economic development program in order to promote a rising level of production and employment. We must convince our people not to begrudge the just share of each for the ultimate benefit and protection of all. After all, the tax program before you places the burden on those who are able to pay and aims to correct inequalities under the present tax system.

NATIONAL DEFENSE

Some eight months ago, the majority of our people believed that the solution of our peace and order problem could be achieved primarily by the adoption of measures other than military. Even today there are some who delude themselves into believing that our peace and order problem is predominantly a social one. Social and economic measures will doubtless contribute immeasurably to the solution of this vital problem. For that reason, I have put into operation various non-military agencies to look after the welfare of the masses in various areas.

Present conditions, however, compel us to meet this problem with military force. We cannot risk losing by sheer default the priceless heritage of freedom we still enjoy.

I am pleased to note that the people and the Congress have given unqualified support for the increase in strength of the Armed Forces by ten battalion combat teams.

In behalf of our fighting men, I urge approval of the bill now before you, granting gratuity and other benefits

to officers and men of the Armed Forces who become casualties in the present anti-dissident campaign. Only by doing so can we hope to do justice to our gallant men who are engaged in the heroic task of restoring peace and order in this country in the shortest possible time.

Equally urgent is our task of making available to the Armed Forces the necessary funds to make possible the retirement of officers and men who have served the country so faithfully and well and thus accelerate their replacement with younger and deserving elements.

FOREIGN AFFAIRS

The new year presages events of extremely serious consequences, particularly to the countries in the Far East. Almost two years ago I presented to the American people, through the U. S. Senate, their highest foreign policy-making body, to the problem of security of the free countries of Asia. I said then, and I say it now, that "I consider it my supreme responsibility in this perilous hour to call upon our friends everywhere, but especially our friends in America, not to tarry too long in the redefinition of fundamental attitudes towards Asia," in the face of growing Communist menace and aggression, for the issue involves "the fate of more than half of mankind in the next thousand years." I decried the lack of "calm, deliberate movement towards clarity, vigor, and resolution." I observed then that the reaction was suppressed or cautious concern. And I posed, "Only the blind will say that the menace does not concern America, because the history of the last two world wars shows all too clearly that this great democracy cannot remain unconcerned wherever and whenever the survival of free men in a free world is at stake."

America's immediate action last June in the defense of the freedom of South Korea justified my prediction. And we are now fighting side by side with her and the forces of the United Nations, in the plains and mountain fastnesses and ravines in Korea, in our determined adherence to the principles of peace, liberty, and justice against the forces of aggression.

Owing to the mounting tension and uncertainty, we have therefore urged for a thorough and expeditious implementation of our military assistance pact with the United States. And we have received assurances from the American Government that the United States will help us defend our national integrity and independence.

But we cannot depend entirely on foreign assistance to maintain our integrity. National honor and dignity require that we do not accept the role of a mere ward in

the defense of our own liberty and freedom. Thus, we are making the utmost sacrifice to meet our internal and external obligations to enable us to contribute our just share to world security. For we can only hope that world statesmanship will eventually find a peaceful and honorable solution to the pressing problems that threaten the freedom and security of mankind.

Gentlemen of the Congress, I have come not merely to urge action, but to offer cooperation. We must pull together and assume solidarity of responsibility in the execution of a program for our country's preservation. I have come to ask that we all concentrate our united efforts to insure our stability as a nation and preserve our liberty as a people. This is our sworn solemn duty, and we can do no better than share cheerfully and decisively in the discharge of that great responsibility.

These are unusual times indeed. We are called upon to do our utmost in a situation in which we have never been placed before. We have to summon all our courage and intelligence and coordinate and contribute all the strength we can muster, in material and moral resources. We cannot afford to fail in meeting the present problem of survival.

Arms without valor, however powerful, are useless weapons. Valor can be aroused only by a righteous cause. This we have, and we are pledged to fight for it and if need be to die for it. We are doing that right now even beyond our borders. We are increasing our forces for this cause—the cause of innocent free men, women, and children in our midst and everywhere, ravished and destroyed by the agents of a foreign foe bent on world domination.

But we know that armed forces are not enough. We need even more critically, on the part of all of us, a moral rearmament. Our greatest enemy can be ourselves when we stubbornly resist to purge what is selfish in us. The world is not merely on the verge of fire; it is on fire. And yet people can be immobilized by fiddling and temporizing while the nation's very life and future are at stake. Let us, as leaders of this nation, give the appropriate example in moral rearmament. Let us, to the limit of our spiritual resources, will to fight the formidable enemy, whose lust for world power has impressed many of our people, to the extent of falling for his familiar tricks of fostering dissension and subversive ambition.

At this most critical moment, our attitude has become a matter of individual and collective conscience. I call upon you to stand as one man, morally and spiritually rearmed to rise and protect our country and people from the blight of inaction and fratricidal strife in a period of the greatest peril.

Welcome speech of His Excellency Elpidio Quirino, President of the Philippines, on the arrival on state visit of President and Madame Achmed Sukarno of the Republic of Indonesia, January 28, 1951:

Mr. PRESIDENT:

You honor the Philippines with your visit. This is indeed a historic moment in the life of the peoples of Southeast Asia. We find this occasion doubly felicitous because it marks the first time that we are being privileged to receive a head of a state into our midst. The arrival of Madame Sukarno with you gives us added pleasure in welcoming you to our shores. I hope you will find your stay with us both worthwhile and enjoyable.

The Filipinos are bound by the closest racial, historical and geographical ties with your people. We followed with keen interest the vicissitudes of the Indonesian struggle for independence. In heart and soul, we were with you always in your fight for self-determination. We shared in your rejoicing when that fight culminated in your independence.

If Indonesia is now free, its freedom is due, in large measure, to your unselfish, vigorous and far-sighted leadership. In thus leading your people, you have become a benefactor of humanity in its fight for liberty; you have raised the stature of a substantial portion of mankind in our part of the world to a higher level of dignity; you have earned for yourself, by your endeavors and patriotism, the esteem of free men everywhere.

My people, having gone through a travail similar to that of your own, can therefore fully appreciate the abiding value of the work you have done and are doing.

It is with a genuine fraternal feeling that I, in behalf of the Filipino people, welcome you, Mr. President, to this country. May you find during your sojourn with us increasing evidence of the kinship and affectionate regard that the Filipinos feel in their hearts for you and your people.

DECISIONS OF THE SUPREME COURT

[No. L-547. June 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. JOSE DE CASTRO, defendant and appellant

1. CRIMINAL LAW; TREASON; MEMBERSHIP IN THE BUREAU OF CONSTABULARY UNDER THE GOVERNMENT OF OCCUPATION.—Appellant's membership in the Bureau of Constabulary under the government of occupation is not treason. That institution was intended for the promotion and preservation of law and order which were essential, during war, to the life of the civilian population.
2. ID.; ID.—Appellant's bringing of the girl to Y's house may have aided to satisfy the lust of a Japanese officer, but such aid was not treasonous as held in *People vs. Perez*, G. R. No. L-856.
3. ID.; ID.; RAPE.—It is well settled that when "some hesitation was shown by the woman or that she had contributed in some way to the realization of the act" there is no rape. (*Viada* as quoted in *U. S. vs. De Dios*, 8 Phil., 279, 282.)

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

L. Javier Inciong for appellant.

Acting First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jose G. Bautista* for appellee.

MORAN, C. J.:

Appellant has been convicted of treason by the Fifth Division of the People's Court and sentenced to life imprisonment, to a fine of ₱10,000, and to pay the costs. The facts proven by the prosecution are as follows:

Appellant was a USAFFE soldier and upon the occupation of the Province of Cebu by the Japanese Army he joined the Bureau of Constabulary and became a regular constabulary soldier under the government of occupation.

On January 13, 1945, at 2 o'clock a. m. a group of four Japanese soldiers accompanied by some constabulary soldiers, one of them the herein appellant, went to the house of the Bacani family of Bulacao, in the suburb of El Pardo, Cebu City. The four Japanese soldiers, headed by Sergeant Yoshida, investigated the two girls, Anita and Rosario Bacani, living in that house and suspected of having some connection with the Cebu guerrillas. The two girls were hanged by their arms, which were tied behind their backs, by the Japanese soldiers and they were later arrested and imprisoned together with their younger brother Ricardo in a house near the Redemptory Monastery. For lack of evidence, the Japanese soldiers released Ricardo, and also Anita and Rosario subsequently, after fourteen and twenty days confinement respectively. Yoshida reminded Rosario before releasing her that she was very lucky for not having been killed.

On or about February 22, 1945, Rosario Bacani was taken from her house by appellant and others and was brought to the house of Yoshida in Cebu City. Yoshida made some amorous advances to Rosario and threatened to kill her and all the members of her family should she not consent to live with him. Rosario had to yield, according to her, because she was afraid of his brutality. Yoshida told her to go home and to return the next day with her mother which she did. Yoshida told Rosario's mother of his desire to have Rosario as servant, cook and laundrywoman, and from then on Rosario became a mistress of Yoshida.

Rosario testified that while she was living in the house of Yoshida, appellant was also living there and was giving reports to Tanamaya, Yoshida's interpreter. There is no evidence, however, of what those reports were, and their felonious character is not to be presumed.

The facts above stated do not constitute treason. Appellant's membership in the Bureau of Constabulary under the government of occupation is not treason. That institution was intended for the promotion and preservation of law and order which were essential during war to the life of the civilian population. Appellant personally did nothing serious except his having taken Rosario Bacani from her house to bring her to the house of Yoshida, but again this is not treason. It may be an aid to satisfy the lust of a Japanese officer, an aid which is not treasonous, as held in *People vs. Perez*, G. R. No. L-856.

Neither is appellant guilty as co-author of rape, for no rape is alleged in the information and no rape had been committed by Yoshida against Rosario, she having yielded her body to him not because an actual force was being exerted upon her, but because she was afraid that otherwise she might be the victim of his brutality. It is well settled that when "some hesitation was shown by the woman or that she had contributed in some way to the realization of the act" there is no rape. (Viada as quoted in *U. S. vs. De Dios*, 8 Phil., 279, 282.)

Judgment is reversed, appellant is acquitted with costs *de officio*.

Ozaeta, Parás, Feria, Bengzon, Tuason, and Reyes, JJ., concur.

PERFECTO, J.:

We concur in appellant's acquittal. Our reason for not convicting him of rape is because this crime is not alleged in the information. It is, therefore, unnecessary for us to decide it, under the circumstances, Rosario Bacani has been raped or not by Yoshida and if appellant has any share in the criminal responsibility, if any.

MORAN, C. J.:

[No. L-1006. June 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FILEMON ESCLETO, defendant and appellant

CRIMINAL LAW; TREASON; THE TWO-WITNESS RULE.—The process of evaluating evidence in treason cases might sound like a play of words but the authors of the two-witness provision in the American Constitution, from which the Philippine Treason Law was taken, purposely made it “severely restrictive” and conviction for treason difficult. It requires that each of the witnesses must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act.

APPEAL from a judgment of the People’s Court.

The facts are stated in the opinion of the court.

Ramon C. Aquino for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr. and
Solicitor Augusto M. Luciano for appellee.

TUASON, J.:

The appellant, Filemon Escleto, was charged in the former People’s Court with treason on three counts, namely:

“1. That during the period of Japanese military occupation of the Philippines, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably collaborate, associate and fraternize with the said Imperial Japanese Forces, going out with them in patrols in search of guerrillas and guerrilla hideouts, and of persons aiding or in sympathy with the resistance movement in the Philippines; bearing arms against the American and guerrilla forces in the furtherance of the war efforts of the Imperial Japanese Forces against the United States and the Commonwealth of the Philippines, and mounting guard and performing guard duty for the Imperial Japanese Forces in their garrison in the municipality of Lopez, Province of Tayabas, Philippines.

“2. That during the period of Japanese military occupation of the Philippines, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably accompany, join, and go out on patrols with Japanese soldiers in and around the municipality of Lopez, Province of Tayabas, in search of guerrillas and guerrilla hideouts, and of persons aiding or in sympathy with the resistance movement in the Philippines.

“3. That on or about the 18th day of March, 1944, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably arrest and/or cause to be arrested one

Antonio Conducto as a guerrilla and did turn him over and deliver to the Japanese military authorities in their garrison, since which time, that is, since the said 18th day of March, 1944, nothing has been heard from the said Antonio Conducto and is considered by his family to have been killed by the Japanese military authorities."

The court found "no concrete evidence as to defendant's membership in the U. N. or Makapili organization nor on what the patrols he accompanied actually did once they were out of town", and so was "constrained to rule that the evidence of the prosecution fails to establish, in connection with counts 1 and 2, any true overt act of treason." We may add that no two witnesses coincided in any specific acts of the defendant. The People's Court believed, however, "that the same evidence is sufficient to prove beyond question defendant's adherence to the enemy."

As to the 3rd count, the opinion of the People's Court was that it had been fully substantiated.

The record shows that on or about March 11, 1944, Japanese patrol composed of seventeen men and one officer was ambushed and totally liquidated by guerrillas in barrio Bibito, Lopez, Province of Tayabas, now Quezon. As a result, some of the inhabitants of Bibito and neighboring barrios, numbering several hundred, were arrested and others were ordered to report at the *población*. Among the latter were Antonio Conducto, a guerrilla and former Usaffe, Conducto's wife, parents and other relatives.

Sinforosa Mortero, 40 years old, testified that on March 18, 1944, at about 5 o'clock in the afternoon, in obedience to Japanese order, she and the rest of her family went to the town from barrio Danlagan. Still in Danlagan, in front of Filemon Escleto's house, Escleto told them to stop and took down their names. With her were her daughter-in-law, Patricia Araya, her son Antonio Conducto, and three grandchildren. After writing their names, Escleto conducted them to the PC garrison in the *población* where they were questioned by someone whose name she did not know. This man asked her if she heard gunshots and she said yes but did not know where they were. The next day they were allowed to go home with many others, but Antonio Conducto was not released. Since then she had not seen her son. On cross-examination she said that when Escleto took down their names Antonio Conducto asked the accused if anything would happen to him and his family, and Escleto answered, "Nothing will happen to you because I am going to accompany you in going to town."

Patricia Araya declared that before reaching the town, Filemon Escleto stopped her, her mother-in-law, her husband, her three children, her brother-in-law and the latter's wife and took down their names; that after taking down their names Escleto and a Philippine Constabulary soldier took them to the PC garrison; that her husband asked Escleto what would happen to him and his family, and

Escleto said "nothing" and assured Conducto that he and his family would soon be allowed to go home; that Escleto presented them to a PC and she heard him tell the latter, "This is Antonio Conducto who has firearm;" that afterward they were sent upstairs and she did not know what happened to her husband.

The foregoing evidence fails to support the lower court's findings. It will readily be seen from a cursory examination thereof that the only point on which the two witnesses, Patricia Araya and Sinforosa Mortero, agree is that the accused took down the names of Conducto and of the witnesses, among others, and came along with them to the town. Granting the veracity of this statement, it does not warrant the inference that the defendant betrayed Conducto or had the intention of doing so. What he allegedly did was compatible with the hypothesis that, being lieutenant of his barrio, he thought it convenient as part of his duty to make a list of the people under his jurisdiction who heeded the Japanese order.

It was not necessary for the defendant to write Conducto's name in order to report on him. The two men appeared to be from the same barrio, Escleto knew Conducto intimately, and the latter was on his way to town to present himself. If the accused had a treasonable intent against Conducto, he could have furnished his name and identity to the enemy by word of mouth. This step would have the added advantage of concealing the defendant's traitorous action from his townmates and of not appraising Conducto of what was in store for him, knowledge of which might impel Conducto to escape.

That the list was not used for the purpose assumed by the prosecution is best demonstrated by the fact that it included, according to witnesses, Conducto's wife and parents and many others who were discharged the next day. The fact that, according to the evidence of the prosecution, spies wearing masks were utilized in the screening of guerrillas adds to the doubt that the defendant had a hand in Conducto's misfortune.

In short, Escleto's making note of persons who went to the *población* as evidence of overt act is weak, vague and uncertain.

The only evidence against the appellant that might be considered direct and damaging is Patricia Araya's testimony that Escleto told a Philippine Constabulary soldier, "This is Antonio Conducto who has firearm." But the prosecution did not elaborate on this testimony, nor was any other witness made to corroborate it although Patricia Araya was with her husband, parents and relatives who would have heard the statement if the defendant had uttered it.

Leaving aside the question of Patricia's veracity, the failure to corroborate her testimony just mentioned

makes it ineffective and unavailing as proof of an overt act of treason. In a juridical sense, this testimony is inoperative as a corroboration of the defendant's taking down of the name of Conducto and others, or vice-versa. It has been seen that the testimony was not shown to have been made for a treasonable purpose nor did it necessarily have that implication. This process of evaluating evidence might sound like a play of words but, as we have said in *People vs. Adriano* (44 Off. Gaz., 4300) the authors of the two witness provision in the American Constitution, from which the Philippine treason law was taken, purposely made it "severely restrictive" and conviction for treason difficult. In that case we adverted to the following authorities, among others:

"Each of the witnesses must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act." (VII Wigmore on Evidence, 3rd ed., Sec. 2038, p. 271.)

"It is necessary to produce two direct witnesses to the *whole* overt act. It may be possible to piece bits together of the same overt act; but, if so, *each bit* must have the support of two oaths; * * *." (Opinion of Judge Learned Hand quoted as footnote in Wigmore on Evidence, *ante*.)

"The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every *action, movement, deed, and word* of the defendant charged to constitute treason must be supported by the testimony of two witnesses." (*Cramer vs. U. S. of A.*, 65 S. Ct., 918; 89 Law. ed., 1441.)

"It is not difficult to find grounds upon which to quarrel with this Constitutional provision. Perhaps the framers placed rather more reliance on direct testimony than modern researches in psychology warrant. Or it may be considered that such a quantitative measure of proof, such a mechanical calibration of evidence is a crude device at best or that its protection of innocence is too fortuitous to warrant so unselective an obstacle to conviction. Certainly the treason rule, whether wisely or not, is severely restrictive. It must be remembered, however, that the Constitutional Convention was warned by James Wilson that 'Treason may sometimes be practiced in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy.' The provision was adopted not merely in spite of the difficulties it put in the way of prosecution but because of them. And it was not by whim or by accident, but because one of the most venerated of that venerated group considered that 'prosecutions for treason were generally virulent.'" (*Cramer vs. U. S. of A.*, *supra*.)

The decision of the People's Court will be and the same

Moran, C. J., Ozaeta, Parás, Feria, Bengzon, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted to reverse.

Judgment reversed; defendant acquitted.

[No. L-1716. June 28, 1949]

MATERIAL*DISTRIBUTORS (PHIL.), INC., and HARRY LYONS, petitioners, *vs.* FELIPE NATIVIDAD, Judge of First Instance of Manila, and LOPE SARREAL, respondents.

1. PLEADING AND PRACTICE; PRODUCTION AND INSPECTION OF DOCUMENTS AND BOOKS, CANNOT BE IDENTIFIED OR CONFUSED WITH UNREASONABLE SEARCHES; RULE 21 OF RULES OF COURT INTERPRETED.—The orders in question, issued in virtue of the provisions of Rule 21, pertain to a civil procedure that cannot be identified or confused with the unreasonable searches prohibited by the Constitution. But in the erroneous hypothesis that the production and inspection of books and documents in question is tantamount to a search warrant, the procedure outlined by Rule 21 and followed by respondent judge place them outside the realm of the prohibited unreasonable searches. There is no question that, upon the pleadings in the case, S has an interest in the books and documents in question, that they are material and important to the issues between him and petitioners, that justice will be better served if all the facts pertinent to the controversy are placed before the trial court.
2. CONSTITUTIONAL LAW; GUARANTY OF PRIVACY OF COMMUNICATION AND CORRESPONDENCE.—The constitutional guarantee of privacy of communication and correspondence will not be violated, because the trial court has power and jurisdiction to issue the order for the production and inspection of the books and documents in question in virtue of the constitutional guarantee making an express exception in favor of the disclosure of communication and correspondence upon lawful order of a court of justice.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Gibbs, Gibbs, Chuidian & Quasha for petitioners.

Claro M. Recto for respondent Lope Sarreal.

No appearance for respondent Judge.

PERFECTO, J.:

On March 24, 1947, Lope Sarreal filed a complaint (amended on April 10, 1947, to include Harry Lyons) seeking a money judgment against petitioners on three causes of action in the total of ₱1,256,229.30.

On May 27, 1947, Sarreal filed a motion for the production and inspection of the following documents:

"I. Books or Papers of Material Distributors (Phil.) Inc.:

"1. Cash Receipts Journal

"2. Cash Payments Journal

"3. All Individual Ledgers, specially of the following persons or entities.

- “(a) British-American Engineering Corporation
 - “(b) Philippine Refinery
 - “(c) Felipe Buencamino
 - “(d) Luzon Stevedoring
 - “(e) Standard Oil Company of New York
 - “(f) Philippine Exchange Co., Inc.
 - “(g) Manila Laundry Company
 - “(h) Filipino Businessmen's Syndicate
 - “(i) Material Distributors, Inc., Wichita, Kansas
 - “(j) Harry Lyons
- “4. All letters exchanged between Material Distributors (Phil.) Inc., Material Distributors, Inc. of Wichita, Kansas and Harry Lyons, between October 9, 1946 and March 31, 1947.
- “5. All cablegrams exchanged between Material Distributors (Phil.), Inc., and Material Distributors, Inc., Wichita, Kansas, between October 9, 1946 to March 31, 1947.
- “II. Books and Papers of the defendant Harry Lyons.
- “1. Letters exchanged between Harry Lyons and Material Distributors, Inc., Wichita, Kansas between September 14, 1946 and March 24, 1947.
- “2. Cablegrams exchanged between Harry Lyons and Material Distributors, Inc., Wichita, Kansas, between September 14, 1946 and March 24, 1947.
- “3. Cash Receipts Journal.
- “4. Cash Payments Journal.”

On June 4, 1947, Sarreal filed a supplemental motion for the production and inspection of the originals of Annexes A and B of the complaint.

On June 12, 1947, petitioners filed a memorandum and apposition to Sarreal's above mentioned original and supplemental motions on the ground that he failed to show good cause and that the motions were evidently filed for the purpose of fishing evidence.

On July 16, 1947, respondent judge, granting both motions, required petitioners to produce the documents and annexes in question on July 24, 1947.

On account of the absence in the Philippines of Harry Lyons, petitioners moved, reserving whatever rights they have under the Rules of Court, to postpone the inspection of the documents and annexes in question and accordingly respondent judge postponed it to August 15, 1947.

On August 13, 1947, petitioners moved for the reconsideration of the order of July 16, on the following grounds:

“(a) Article 46 of the Code of Commerce which prohibits the delivery, communication and general examination of the correspondence of merchants, a substantial right, as well as the petitioners' right to the inviolability of their correspondence as guaranteed by the Constitution would be violated by the order requiring the production of the following documents:

“BOOKS AND PAPERS OF DEFENDANT HARRY LYONS

- “(1) Letters exchanged between Harry Lyons and Material Distributors, Inc., of Wichita, Kansas, between September 14, 1946 and March 24, 1947;

"(2) Cablegrams exchanged between Harry Lyons and Material Distributors, Inc., of Wichita, Kansas, between September 14, 1946 and March 24, 1947.

"BOOKS AND PAPERS OF MATERIAL DISTRIBUTORS (PHIL.) INC.

"(4-5) All letters and cablegrams exchanged between Material Distributors (Phil.), Inc., Material Distributors, Inc., of Wichita, Kansas, and Harry Lyons between October 9, 1946 and March 31, 1947.

"(b) That the production for plaintiff's inspection of all the foregoing documents above enumerated, as well as of the following documents, would constitute a 'fishing expedition,' not allowed by Rule 21 of the Rules of Court, since their materiality or probable materiality is not shown by the pleadings of the parties except by movant's bare allegations which are disputed by your petitioners:

"BOOKS AND PAPERS OF MATERIAL DISTRIBUTORS (PHIL.) INC.

"1-2. Cash Receipts Journal and Cash Payments Journal.

"3. All individual Ledgers, specially of the following persons or entitles.

"(b) Philippine Refinery.

"(c) Felipe Buencamino.

"(d) Luzon Stevedoring.

"(e) Standard Oil Company of New York.

"(f) Philippine Exchange Co., Inc.

"(g) Manila Laundry Company.

"(c) That plaintiff is not entitled to the production and inspection of the originals of Annexes A and B because his only purpose, as stated in his supplemental motion, Exhibit D, was to find out if a case of falsification has been made; that the issue between the parties in this regard is material only to your petitioners' affirmative defense, and that if plaintiff's purpose was as stated in said supplemental motion, then your petitioners claimed their privilege against self-incrimination. That this latter privilege was also claimed insofar as the production and inspection of the other documents were concerned by your petitioners in view of counsel for respondent Lope Sarreal's charge to the Honorable City Fiscal for the City of Manila that your petitioners were violating our Corporation Law."

On September 27, 1947, respondent judge denied the motion for reconsideration.

Petitioners impugn the validity of the orders of July 16 and September 27, 1947, as were issued by the respondent judge in excess of his jurisdiction or with grave abuse of his discretion, and prayed for the annulment or modification of the order of July 16, 1947.

Respondent Sarreal advance the following reasons to show that the orders complained of were not issued in excess of the trial court's jurisdiction or with grave abuse of discretion:

"(a) The motions of the respondent Lope Sarreal of May 27, 1947 and June 4, 1947 contain allegations of the untimate fact that

the books and papers mentioned in said motions constitute or contain evidence material to the matters involved in the case and are in the possession, custody or control of the petitioners herein, and allegation to this effect is adequate showing of good cause for the production and inspection of the documents mentioned therein, being an allegation in the very words used in Form 11 of the Appendix Forms of our Rules of Court, and therefore a sufficient compliance with said Rule (*Go Tianco vs. Judge Diaz*, G. R. L-7, January 22, 1946, reported in the June 1946 issue of the Official Gazette).

"(b) Article 46 of the Code of Commerce invoked by the petitioners does not apply to cases of production and inspection of books and papers belonging to a party to the action in which such production and inspection are sought (Decision of Supreme Court of Spain of March 30, 1894). At any rate, said Article of the Code of Commerce has been impliedly repealed by Act No. 190, pertinent portions of which are now embodied in our Rules of Court (3 Op. of Atty. Gen., 380).

"(c) Neither would the inspection of books and papers of the petitioners amount to a violation of the inviolability of correspondence under Sec. 1, No. 5, Article III of the Constitution of the Philippines, considering that the inspection of said books and papers are sought through proper order of the trial court, and the Constitutional provision invoked by the petitioners precisely allows inspection of communication and correspondence *upon lawful order of the court*. Moreover, this provision of our Constitution creates no new right, being merely a re-enforcement of the Constitutional prohibition against *unreasonable* searches and seizures (*Sinco*, Philippine Government and Political Law, 4th Edition, p. 632), and when the inspection of such books and papers was allowed 'upon lawful order of the court' made through the respondent Judge, such inspection cannot be considered as *unreasonable* altho such books and papers are private in character (*First National Bank vs. Hughes*, 6 Fed., C 737, 741, appeal dismissed for want of jurisdiction in 106 U. S., 523, 27 Law ed., 268, 1 Sup. Ct. Rep., 489; *Johnson Steel Street-Rail Co. vs. North Branch Steel Co.*, 48 Fed., 191; *Victor G. Beede Co. vs. Joseph Bancroft & Sons Co.*, 98 Fed., 175, affirmed in 52 L.R.A., 734, 45 C.C.A., 354, 106 Fed., 396, where this question was not involved; *Burnham vs. Morrissey*, 14 Gray, 226, 74 Am. Dec., 676; *United States vs. Terminal R. Assoc.*, 148 Fed., 486; *Re Dunn*, 9 Mo. App., 255; *Elder vs. Bogardus*, 1 Edm. Sel Cas., 110; *Boston & M.R. Co. vs States [N. H.]*, 77 Atl., 996; *Hopkinson vs. Burghley*, L. R. 2ch., 447; *Groker-Wheeler Co. vs. Bullock [C. C.]*, 134 Fed., 241; *Re Bolster*, 110 Pac., 547).

"(d) The inspection of said documents is not for the purpose of 'fishing evidence' but with a view to enabling the respondent Lope Sarreal to designate with particularity in the *subpoena duces tecum* to be obtained in connection with the trial of the case on its merits the specific books and papers containing the entry of receipts and payments made by the petitioners, such books and papers being material to the case in view, among others, of the allegations in the amended complaint that the defendants, the petitioners herein, had been remitting all or the greater volume of the proceeds from the sales of equipments and materials of the defendants in Civil Case No. 2059 outside the jurisdiction of the trial court and had been disposing of their properties with the intention of defrauding their creditors. At any rate, 'fishing expedition' is allowed and is precisely contemplated in Rule 21 of our Rules of Court as a weapon of discovery (XXVI Am. Bar. Ass. J. *ur.* No. 1, Jan. 1940, 48; *Golden vs. Arcadia Mutual Casualty Company*, D. C. Ill., 1942, 3 F. R. D., 26; *Leach vs. Griff Bros. Coop. Corp.*, D. C. Miss., 1942 2 F. R. D., 444; *Civil Aeronautics Board of Aeronautic Authority*

vs. Canadian Colonial Airways, D. C., 1941, 41 F. S., 1006; *Quemus Theatre Co. vs. Warner Bros. Pictures*, D. C. N. J., 1940, 35 F. S., 949; *United Mercantile Agency vs. Silver Fleet Motor Express*, D. C. Ky., 1941, 1 F. R. D., 709; *Walling vs. Richmon Screw Anchor Company*, D. C. N. Y., 1943, 4 F. R. D., 265; *Monarch Liquor Corp. vs. Schenley Distillers Corp.*, D. C. N. Y., 1941, 2 F. R. D., 51; *Walsh vs. Comm. Mutual Life Insurance Company of Hartford, Conn.* [1939], 26 F. Supp., 556; *Olson Transportation Company vs. Socony Vacuum Oil Company*, 7 F. R. D., 234).

“(e) The originals of Annexes A and B are relevant not only to the case of the defendants but also to that of the plaintiff in Civil Case No. 2059 here involved, in view of the issue of fact raised by the pleadings of the parties as to whether the originals of Annexes A and B have been falsified by the insertion therein of the names of Gil J. Puyat and Raymond Lehmann *after* said Annexes were signed by respondent Lope Sarreal and delivered to the petitioner Harry Lyons, in view of which respondent Lope Sarreal is entitled to the production and inspection thereof under the provisions of Rule 21 of our Rules of Court.

“(f) Even if ocular inspection of said Annexes A and B may reveal falsification thereof by the petitioners amounting to a violation of the applicable provisions of our Revised Penal Code, the petitioners cannot exempt themselves from the production of said exhibits for *mere inspection* and copying, inasmuch as the Constitutional prohibition against self-incrimination has been extended in specific cases *only* to the production of documents *as evidence*, and *only* when the person producing them is made to take the witness stand and identify them under oath, and *not* to the production of such documents for *mere inspection* (*Comm. vs. Southern Express Co.*, 1914, 160 Ky., 1, 169 SW., 517, annotated cases 1916A, 373, L. R. A., 1915B, 913; *U. S. vs. Hughes*, 12 Blatchff, 553); the reason being that the Constitutional prohibition is one against compelling a person to be a ‘witness against himself’, and this has been held to mean *testimonial compulsion* or extraction of admission from the *person's own lips* (4 Wigmore, 865, 2263; *Wilson vs. U. S.*, 55 Law. ed., 776, citing cases).

“(g) Moreover, the corporate records sought to be inspected are not covered by the Constitutional prohibition against self-incrimination, even though such documents may contain evidence tending to subject any or all of the officers of a corporation to a criminal indictment (*Wilson vs. U. S.*, 221 U. S., 361, 51 Law. ed., 771; *Oklahoma Press Pub. Co. vs. Walling*, 327 U. S., 186, 90 Law. ed., 614, 627-629; *U. S. vs. Baunch & Lamp Optical Co.*, 321 U. S., 707, 88 Law. ed., 1024, 1037 [1944]; *U. S. vs. White*, 88 Law. ed., 1547).

“(h) Production and inspection of documents have been allowed and sustained in decided cases, under Orders which were broader than those here assailed, for the production and inspection of *all* books of accounts, *all* memoranda and records, stock book, ledger, journal, cash book, bank book, bank deposit slip, check book, voucher, contract, income tax return, booking record and correspondence (*U. S. vs. Duodera*, 1 F. R. S., 466, U. S. D. C. June 16, 1939; *Orange Country Theater Corp. vs. League*, 1 F. R. S., 448).

“(i) The respondent Judge, before issuing the Orders complained of, gave the parties full opportunity, not only to discuss the question involved by repeated oral arguments but also by written memoranda, and in the exercise of his discretion issued the Orders complained of only after full consideration of all the questions of fact and law involved.”

The production and inspection of documents and books here in question call for the interpretation and application of section 1 of Rule 21, which reads as follows:

"SECTION 1. *Motion for production or inspection; order.*—Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just."

Petitioners contend that in filing his original and supplemental motions, Sarreal has failed to show good cause for the issuance of the requested order. It appears, however, in the original motion of May 27, 1947, that the books and papers therein mentioned "constitute or contain the evidence material to the matters involved in the above entitled case."

In the supplemental motion of June 4, 1947, it is alleged that there is direct conflict between the allegations of the complaint and amended complaint and those of the answer and amended answer as to whether or not the names of Gil J. Puyat and Raymond W. Lehmann appear in any part of the originals of Annexes A and B of the complaint, and plaintiff Sarreal wanted the production and inspection of said originals to show that they did not contain the names of Gil J. Puyat and Raymond W. Lehmann, and that if said names should appear now typed in said Annexes A and B, said additional names must have been typed by direction of Harry Lyons without the knowledge or consent of Sarreal and after said originals were delivered by Harry Lyons and filed by the latter and that the changes so introduced are a forgery.

With these allegations in the original and supplemental motions Sarreal has fulfilled the requirement of showing good cause for the production and inspection of the books and documents in question under Rule 21.

Petitioners contend that the order of the trial judge violated petitioners' constitutional right against self-incrimination.

We have considered carefully the reasons advanced by petitioners in their pleadings and memoranda in support of this allegation and we found nothing in them to show how, without the inspection of Annexes A and B of the complaint, petitioners may incriminate themselves. We have, therefore, to dismiss such contention.

Petitioners contend that the orders complained of trampled upon petitioners' right to the inviolability of the correspondence and communication as guaranteed by the following provisions of the Constitution:

"(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Sec. 1, Art. III, Constitution of the Philippines.)

"(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise." (Sec. 1, Art. III, Constitution of the Philippines.)

The orders in question, issued in virtue of the provisions of Rule 21, pertain to a civil procedure that cannot be identified or confused with the unreasonable searches prohibited by the Constitution. But in the erroneous hypothesis that the production and inspection of books and documents in question is tantamount to a search warrant, the procedure outlined by Rule 21 and followed by respondent judge place them outside the realm of the prohibited unreasonable searches. There is no question that, upon the pleadings in the case, Sarreal has an interest in the books and documents in question, that they are material and important to the issues between him and petitioners, that justice will be better served if all the facts pertinent to the controversy are placed before the trial court.

The constitutional guarantee of privacy of communication and correspondence will not be violated, because the trial court has power and jurisdiction to issue the order for the production and inspection of the books and documents in question in virtue of the constitutional guarantee making an express exception in favor of the disclosure of communication and correspondence upon lawful order of a court of justice.

After a careful consideration of the legal questions raised by petitioners, this Court has arrived at the conclusion that the trial judge, in issuing the order of July 16, 1947, has not exceeded his jurisdiction or acted with grave abuse of discretion.

Petition denied with costs against petitioner.

Moran, C. J., Parás, Feria, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

Petition denied.

[No. L-2427. June 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ANATALIO SALIENTE (*alias* UDTUHAN) and JULIAN
MONTILLA, defendants and appellants.

CRIMINAL LAW; SLIGHT ILLEGAL DETENTION.—The crime committed is that of slight illegal detention under the third paragraph of article 268 of the Revised Penal Code, as amended by Republic Act No. 18, approved on September 25, 1946, it appearing that the defendants voluntarily released J. B. within three days from the commencement of her detention without having attained the purpose intended and before the institution of the criminal action against them.

APPEAL from a judgment of the Court of First Instance of Leyte. Enriquez, J.

The facts are stated in the opinion of the court.

Menandro Quiogue for appellants.

Assistant Solicitor General Guillermo E. Torres and
Solicitor Isidro C. Borromeo for appellee.

REYES, J.:

Found guilty by the Court of First Instance of Leyte of the crime of illegal detention and sentenced to an indeterminate penalty ranging from 2 years, 4 months and 1 day of *prisión correccional* to 7 years, 4 months and 1 day of *prisión mayor*, and to pay the costs, the defendants above named have appealed to the Court of Appeals, but a division of that court has certified the case here as one beyond its jurisdiction on account of the penalty which, in its opinion, should be imposed.

The evidence shows that at about 9 o'clock in the evening of November 4, 1946, the defendants came to the house of Telesfora Alentejo in the barrio of Umating, Abuyog, Leyte, where Telesfora's niece, Juana Briones, was then staying. Telling Juana that they had come for her by order of their "chief," they asked her to go along with them and when she refused she was threatened by defendant Montilla with a bolo and by defendant Saliente with a pistol and then taken against her will to the latter's house in the barrio of Tambis, about two kilometers away. It would appear that the defendants were accompanied by some soldiers, although these were neither named nor identified. Once in Saliente's house, defendants let Juana know that what they had told her about their "chief" wanting to see her was a mere ruse to enable Montilla to have a talk with her in private so that he could persuade her into marrying him. Juana retorted that she did not want to marry anybody.

Juana was kept in Saliente's house for two nights and one day, but no attempt was made against her honor, thanks to the presence of Saliente's wife. On the third day, Juana was able to persuade the defendants to take

her to the house of her brother, Brigido Enclona, so that they could talk the matter over with him. There they were joined by Montilla's father who, in behalf of his son, asked for Juana's hand in marriage. As Juana turned a deaf ear to the proposal, the trio took their departure, leaving her in the house of her brother.

In the evening of that same day, however, the defendants came back and, supposing that Juana had fooled them, they forcibly took her downstairs. Montilla then led her away, while Saliente stayed behind to wait for Enclona, who was then absent. Meeting Enclona on the road, Juana warned him that Saliente was lying in wait for him with the intention of doing him harm. On hearing this, Enclona ran away, while Montilla, on his part, left Juana to herself and went back to rejoin Saliente.

The defendant Montilla admitted having taken Juana from the house of her aunt, but put up the defense that this was done with her consent, since they had long been sweethearts and had, on the day in question, exchanged notes regarding their elopement. On this point he was corroborated by Agustin Jayma and Leonardo Sillar, who claimed to have seen those notes.

We are with the trial court in rejecting this defense. If Juana were really in love with Montilla and had agreed to elope with him, we do not see why she should refuse to marry him and even try to send him to jail on a false charge. Proof that Juana had not given her consent is the fact that defendants were obviously expecting resistance, for they were not only armed but also accompanied by soldiers. The alleged exchange of notes between Juana and Montilla must be pure fabrication, since it is admitted that these two did not know how to read and write.

The defense of alibi put up by defendant Saliente has nothing to support it other than the biased testimony of himself and his mother and is not sufficiently convincing to overcome the positive testimony of the witnesses for the prosecution as to his participation in the crime. And even supposing that Brigido Enclona had really a grudge against him because he had confiscated his gun and given him a fist blow besides, this in itself would hardly furnish a sufficient reason for Juana Briones to implicate him in a crime in which he had no part.

The contention that the trial court had no jurisdiction to try this case without a new information after it had been provisionally dismissed without defendants' consent, and that the reopening of the case after such dismissal placed them in double jeopardy, lacks concrete basis, for the record before us does not disclose the facts upon which the contention is founded. As the Solicitor General observes, all that can be found touching on this point is some vague manifestation of counsel made at the com-

mencement of the hearing, and such manifestation does not, of course, constitute evidence of the facts now alleged in support of the plea of double jeopardy and lack of jurisdiction.

The crime committed is that of slight illegal detention under the third paragraph of article 268 of the Revised Penal Code, as amended by Republic Act No. 18, approved on September 25, 1946, it appearing that the defendants voluntarily released Juana Briones within three days from the commencement of her detention without having attained the purpose intended and before the institution of the criminal action against them. The penalty prescribed is *prisión mayor* in its minimum and medium periods and a fine not exceeding P700. As the crime was committed with the aggravating circumstances of nocturnity and dwelling, not compensated by any mitigating circumstance, the said penalty should be imposed in its maximum period.

Wherefore, the defendants are declared guilty of slight illegal detention and, in accordance with the Indeterminate Sentence Law, sentenced each to a penalty of from 2 years, 4 months and 1 day of *prisión correccional* to 8 years, 8 months and 1 day of *prisión mayor*. They are furthermore sentenced each to pay a fine of P500. Modified accordingly, the sentence appealed from is affirmed, with costs against the appellants.

Moran, C. J., Ozaeta, Parás, Feria, Bengzon, and Tuason, JJ., concur.

REYES, J.:

I hereby certify that Mr. Justice Pablo and Mr. Justice Perfecto voted in favor of this decision.

Judgment modified; penalty increased.

[CA-No. 8037. June 28, 1949]

DIRECTOR OF LANDS and ALFONSO MARIANO, plaintiffs;
ALFONSO MARIANO, plaintiff and appellant, *vs.* MAXIMIANO P. MARTIN and Datu MAMINTU LUMANTAG,
defendants and appellees.

1. TORRENS REGISTRATION; PURCHASER "PENDENTE LITE."—A transferee *pendente lite* stands exactly in the shoes of the transferor and is bound by any judgment or decree which may be rendered for or against the transferor.

2. *Id.*; INNOCENT PURCHASER FOR VALUE; DOCTRINE REITERATED.—"The contention that the petitioners must be regarded as innocent purchasers for value within the meaning of section 38 cannot be sustained. They acquired their interest in the land before any final decree had been entered; the litigation was therefore in effect still pending and it appears that they were aware of that fact. In these circumstances, they can hardly be considered innocent purchasers in good faith." (Rivera *vs.* Moran, 48 Phil., 836, 840.)

APPEAL from a judgment of the Court of First Instance of Cotabato.

The facts are stated in the opinion of the court.

Francisco Altea for appellant.

Antonio Quirino and *Raul A. Aristorenas* for appellees.

MORAN, C. J.:

This action for the annulment of a transfer certificate of title commenced sometime before the war in the Court of First Instance of Cotabato. From a judgment of dismissal, the case was raised to the Court of Appeals which held that it involved purely questions of law and, hence, certified it to this Court. While thus pending, the war came, the case was held in abeyance and the records were lost during the destruction of Manila by the Japanese forces. After liberation, the records were reconstituted and the appeal has been revived.

It appears that in July 1932, Alfonso Mariano, the herein appellant, filed a homestead application over a parcel of land situated in the municipality of Libuñgan, Province of Cotabato. His claim was opposed by Ricardo Reyes represented by Maximiano P. Martin, one of the appellees herein. On September 8, 1933, the Director of Lands granted Alfonso Mariano preferential rights over said homestead known as lot No. 2931 and directed him to file his application, which he did.

In November of 1933, cadastral hearings were held in Midsayap, Cotabato, by the Court of First Instance and lot No. 2931 was included among those to be heard. At the hearing of said lot, Ricardo Reyes, the same one who had claimed this lot in the homestead proceedings which resulted favorably for Alfonso Mariano, and another person named Gattoc, both represented by appellee Martin, filed their answers as claimants. After hearing, on November 25, 1933, the court declared said lot as public land and granted Reyes and Gattoc preferential homestead rights over it. Alfonso Mariano had not taken part in these proceedings.

A few days after, upon the intervention of their counsel Maximiano P. Martin, Ricardo Reyes and Gattoc withdrew their claims over lot No. 2931, and at the same time, one Datu Mamintu Lumantag filed a claim of private ownership over the lot. The referee who had been commissioned to conduct these proceedings, ordered and held a rehearing of which neither the Director of Lands nor the fiscal had been notified. Reyes and Gattoc having withdrawn their claims, Lumantag's claim stood unopposed.

This rehearing took place in November 1933 and on December 18, 1933, while the decision of the court was pending, Lumantag sold his rights over said lot to appellee Martin. Finally, on May 17, 1934, the court rendered

judgment adjudicating the lot to Lumantag as his private property and ordered the issuance of the decree of registration on November 28, 1934.

On May 13, 1935, appellant Mariano filed with the same court a petition for review of aforesaid decree on the ground of fraud. However, on July 22, 1935, in pursuance of the decision of the court, the register of deeds issued an original certificate of title over lot No. 2931 in favor of Datu Mamintu Lumantag. Whereupon, appellee Martin presented the deed of sale executed by Lumantag in his favor on December 18, 1933, and obtained a transfer certificate of title in his name on October 7, 1935.

Finally, on March 21, 1936, the same court issued an order on appellant's petition for review setting aside its own decision of May 17, 1934 insofar as it declared lot No. 2931 as the private property of Datu Mamintu Lumantag. From this order there was no appeal.

The controversy thus stood until appellant Mariano filed a complaint in the same Court of First Instance of Cotabato on March 12, 1938, asking for the annulment of the transfer certificate of title over lot No. 2931 issued to appellee Maximiano P. Martin. On June 29, 1940, judgment was rendered dismissing the complaint. Hence, this appeal which has been certified to this Court by the Court of Appeals.

This Court finds that appellant's complaint is meritorious and was wrongly dismissed by the lower court. It is predicated mainly on the order of the lower court setting aside its own decision of May 17, 1934, wherein lot No. 2931 was adjudicated as the private property of Lumantag. Said order is valid, it having been issued by a court having jurisdiction over the subject matter and over the persons of the parties. And it has become final, no appeal having been taken therefrom within the time provided by the rules. It being final, it is now conclusive as to the issue of fraud by which Lumantag secured the decree issued in his favor. And that order is binding upon the purchaser Maximiano Martin, who made his purchase five months prior to the rendition of the judgment in favor of the vendor Lumantag. Martin, therefore, is a transferee *pendente lite* and without the necessity of joining him as a party, he stands exactly in the shoes of the transferor and is bound by any judgment or decree which may be rendered for or against the transferor. (Rule 3, sec. 20, of the Rules of Court; *Fetalino vs. Sanz*, 44 Phil., 691; and *Rivera vs. Moran*, 48 Phil., 836.) Had the purchase been made after the decree was issued in favor of Lumantag then nothing that may vitiate the validity of such decree may affect the purchaser Martin if the latter had acted in good faith. Since, however, Martin acquired the property while the litigation was pending anything that may affect the vendor will also affect the vendee, the latter's

good faith being immaterial. The good faith protects the purchaser when it rests mainly upon a decree.

Furthermore, the following words of this Court in *Rivera vs. Moran* (48 Phil., 836, 840) are perfectly applicable in the instant case: "The contention that the petitioners must be regarded as innocent purchasers for value within the meaning of section 38 cannot be sustained. They acquired their interest in the land before any final decree had been entered; the litigation was therefore in effect still pending and it appears that they were aware of that fact. In these circumstances, they can hardly be considered innocent purchasers in good faith."

For all the foregoing, the judgment appealed from is reversed and appellee Maximiano P. Martin is ordered to surrender to the trial court the transfer certificate of title issued in his name on lot No. 2931, which is hereby declared null and void, with costs against said appellee.

Ozaeta, Parás, Feria, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

Judgment reversed.

[No. L-1794. June 30, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. VENERANDO VIERNES ET AL., defendants. DANIEL
ARTATES, appellant.

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; EVIDENCE; IDENTITY OF ACCUSED.—Identity of accused can not be based upon uncertain and inconsistent testimonies of the witnesses for the prosecution.
2. ID.; ID.; ID.; CONFESSION; REPUDIATION DUE TO INVOLUNTARINESS SHOULD BE TIMELY MADE.—The repudiation made by the accused of their affidavits or confessions for the first time only during the trial in the Court of First Instance is an afterthought born of their eleventh hour attempt to escape responsibility.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Mañalac, J.

The facts are stated in the opinion of the court.

Manuel A. Zarcal for appellant.

Assistant Solicitor General Inocencio Rosal and *Solicitor Francisco Carreon* for appellee.

TUASON, J.:

This appeal, from a judgment of conviction for robbery with homicide, raises the sole question of identity.

There were six defendants. Two were discharged for lack of sufficient evidence after the prosecution rested, and two others were acquitted for the same reason after both parties submitted the case.

Hermogenes Cabuang and Daniel Artates, the remaining accused, were pronounced guilty of the crime of robbery with double homicide, and sentenced to *reclusión perpetua* with the accessories of law; to pay, jointly and severally, the sum of P500 to Serapio de la Cruz; to return the two wrist watches or pay their value, P300, jointly and severally, to the heirs of Francisco Natividad; to indemnify the said heirs and those of Evangelina Natividad, also jointly and severally, in the sum of P4,000, and each to pay his proportionate share of the costs. From this sentence only Daniel Artates appealed.

The conviction of the appellant rests on the testimony of two eyewitnesses, Leonora de la Cruz and Feliciano Arellano, and on his sworn confession.

It appears that at about 8 o'clock on the evening of September 21, 1946, two armed men broke into the house of Serapio de la Cruz in barrio Pongonsile, municipality of Aguilar, Province of Pangasinan, forcing their way through the back door. Before the two robbers rammed the door, a volley of shots was fired into the house killing a nine-year old daughter of Leonora de la Cruz and wounding the latter in the left arm and the right elbow.

Inside the house, one of the two robbers kicked Serapio de la Cruz, Francisco Natividad (Leonora's husband), and Feliciano Arellano, and then shot and fatally wounded Francisco Natividad with a pistol. Afterward he demanded money from Serapio de la Cruz and got P500. He also searched the house with a flashlight and grabbed two wrist watches, worth P150, which he saw hanging on the wall. Both watches belonged to Francisco Natividad.

While all this was going on, the other robber in the house was seated on an army cot nursing a wound. He carried a rifle. An undetermined number of the robbers stayed downstairs.

At the trial, the two eyewitnesses pointed to Hermogenes Cabuang as the man carrying a rifle and seated on a cot. The other man, who, they said, shot down Francisco Natividad, received P500 from Serapio de la Cruz, and picked the two watches from the wall, was Daniel Artates.

Very little or no weight can be given to these witnesses' identification of Daniel Artates. In an affidavit (Exhibit 1 and 1-A) subscribed and sworn to by Leonora de la Cruz soon after the crime, this woman declared that she recognized only one of the malefactors. She further stated that she recognized that person because she had often seen him in the public market in Mangatarem, Pangasinan. She had not seen the other before. (According to the two witnesses, the man whom they had frequently seen in the public market was Cabuang, and it was Cabuang, they said, who was seated on a cot and had a rifle.) Now, Leonora de la Cruz also admitted that before the trial of this case

she was summoned to the office of the provincial fiscal for the purpose of pointing out the two men she had seen in the house, and it appears that out of four accused who were made to stand up in front of her she identified Hermogenes Cabuang only. Daniel Artates, who was one of those four prisoners, she did not pick out.

Feliciana Arellano, the other witness, admitted that on September 23, she made and signed a statement (Exhibit 2, Cabuang-Artates) before the municipal mayor, and that she said "No, sir" when she was asked, "Do you recognize the robbers who went to the house that night?" And in answer to the question of the provincial fiscal on re-direct examination, "To whom did you refer, out of these six accused, as the man holding the caliber .45 pistol, 'about 5 feet tall, about 48 kilos and about 30 years old, who wore a fatigue shirt terno rolled until the knee?'" She pointed to Daniel Artates. But to the fiscal's next question asking her which of the six defendants "sat on the cot with a rifle, is about 5 feet and 3 inches tall wearing a fatigue terno?" (Cabuang's description) she indicated Daniel Artates again.

It is manifest from this confusion and from the contradictions between the witnesses' testimony at the trial and their previous statements, that Leonora de la Cruz and Feliciana Arellano were uncertain about the identity of Cabuang's companion who came inside the house with him. As a matter of fact, Daniel Artates said in his extrajudicial statement, which was introduced in evidence by the prosecution, that it was Hermogenes Cabuang and Paran who entered the house.

However, we are satisfied that appellant's confession was voluntary. Apropos of this confession, the trial court observed that "prior to the trial of the case in the Court of First Instance, both accused, Cabuang and Artates, appeared in the preliminary investigation before the justice of the peace of Mangatarem, Pangasinan, and they did not then complain to the judge or any other civil official that they had been subjected to ill-treatment, or that they had been intimidated;" that they did not show "to the judicial official the traces of maltreatment that they received;" "that both Artates and Cabuang remained silent and made revelation for the first time of the supposed maltreatment only during the trial in the Court of First Instance, knowing pretty well the importance of this confession." The court concluded that "the repudiation by the accused of their affidavits or confessions is an afterthought born of their eleventh hour attempt to escape responsibility."

The record does not disclose any circumstance of weight which would justify us in reversing the above findings. One important point which the court below may have

overlooked strengthens rather than weakens its conclusions. It is the fact that the appellant expressly ratified the truth of his confession to the justice of the peace of Lingayen who took his oath.

Judged by its contents, we do not believe the confession was framed by the military police out of their own mind. The narration is lengthy and rich in details which only the appellant could very well have supplied, while the military police had no reason or necessity to invent them. Furthermore, the confession contains matters calculated to enumerate the declarant or mitigate his responsibility. For example, it named Hermogenes Cabuang and Paran as the two men who broke into the house, and it said that the declarant had been forced to join the band. The first assertion is in direct contradiction to the prosecution's theory that it was Artates who killed Natividad, carried away Natividad's watches, and was handed the cash. A confession fabricated by the police would have been patterned after the main features of the eyewitnesses' testimony—to bolster, not weaken or destroy, it.

The appellant's confession constitutes sufficient evidence to convict. The appealed judgment is therefore affirmed with costs.

Moran, C. J., Ozaeta, Parás, Feria, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I certify that Mr. Justice Pablo voted to affirm the appealed decision.

Judgment affirmed.

[No. L-1797. June 30, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. RAFAEL MENDOZA, FELIPE SUIZO, AMBROSIO GARCIA, ANDRES DE MESA, JOSE DIMAANO, and EUSEBIO HERNANDEZ, defendants. FELIPE SUIZO, appellant.

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ACCUSED'S LONG ACQUAINTANCE WITH THE VICTIM AS ONE OF THE POSSIBLE MOTIVES FOR THE KILLING.—The circumstance that accused was well known to the deceased couple may have been one of the reasons that prompted him to silence them forever by putting them to death.
2. *Id.*; *Id.*; LIABILITY OF A PARTICIPANT.—Being a participant in the robbery, the accused cannot escape liability for the killing of the spouses just because he did not actually take part in the killing, there being no proof that he made any endeavor to prevent it.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Tomas Dizon for appellant.

Assistant Solicitor General Guillermo E. Torres and
Solicitor Lucas Lacson for appellee.

REYES, J.:

In the night of July 13, 1946, an armed band raided the house of Jose Evangelista and his wife, Epifania Cordero, in barrio Del Remedio, or Wawa, of the City of San Pablo, Laguna, robbing them of ₱20, and shooting both of them to death.

Following an investigation by the city police, six persons were accused of robbery with double homicide for alleged participation in the above raid. Those accused were Rafael Mendoza, Felipe Suizo, Andres de Mesa, and three others who, at the time of the trial, had not yet been apprehended. Andres de Mesa turned state witness and was excluded from the information. Rafael Mendoza pleaded guilty and was sentenced to life imprisonment. Declining to make the same plea, Felipe Suizo went to trial, which resulted in his conviction, and the case is now before us on his appeal.

The record shows that appellant's participation in the crime charged is established not only by the testimony of one of his companions in the raid (the accused Andres de Mesa, who turned state witness), but also by that of 18-year old Remedios Cordero, who being one of the inmates of the house raided, was able to recognize appellant as one of the raiders. It would appear from the combined testimony of these two witnesses that on the night in question the six defendants had set out to rob, the defendant Mendoza being armed with a .45-caliber pistol and four of the other defendants with a carbine each. As they came near Jose Evangelista's house, Mendoza asked appellant, who lived in those parts, if they could get anything from there ("makakatipak ba tayo dian?"), and assured that they could, the group went to the said house and tried to gain entrance by calling the owner and asking for some oil or an electric light bulb. As they were told that they could have neither of these, they asked that the door be opened, saying that they wanted to speak to the owner. Once the door was opened, Mendoza went up with three of his codefendants, leaving the other two downstairs as guards. On the balcony they were met by the spouses Jose Evangelista and Epifania Cordero, whom they asked for money. Going into his room, Evangelista soon came back and handed ₱20 to Mendoza, saying that it was all the money he had. But Mendoza did not believe him and pressed him to give more. Evangelista replied that they could search the house and was welcome to any amount they could find. One of the defendants then searched the bedroom, another posted himself at the door of the balcony, while appellant followed

Remedios Cordero into the dining room and, carbine in hand, told her not to move or something would happen to her. Mendoza, on his part, with his hand on his pistol went with the couple to their room and closed the door behind him. Shortly thereafter, there was a commotion in that room followed by a shot, then by the screams of Epifania Cordero and by four other shots. On hearing the shots, the companions of Mendoza fled.

After the robbers had left, the dead bodies of Jose Evangelista and Epifania Cordero, one on top of the other and drenched in blood, were found in their room. Expert examination showed that the couple died from gun-shot wounds. Near their bodies were found five empty cartridges, caliber .45, which according to a ballistic expert were fired from the pistol identified in evidence as formerly belonging to defendant Mendoza but sold by him to one Juan Pandiclan after the robbery. Andres de Mesa also testified that when he was already downstairs he saw Mendoza jump out of the window, pistol in hand, and that, once they were together, Mendoza told him he had killed the couple.

That same night Remedios Cordero told the chief of police, that she was able to recognize appellant Felipe Suizo (whom she then called Iping Bachoy) as one of the robbers, and on a latter date she was also able to identify, from a group of twenty persons that were lined up before her, both appellant and the defendant Mendoza as two of those who had taken part in the robbery.

Appellant declared that at the time of the robbery he was sleeping in his house and that he was awakened by his wife when the latter heard the shots. This declaration, though corroborated by his wife, is not entitled to much weight in view of appellant's positive identification by the witness Remedios Cordero as the one who watched her in the dining room while his companions were searching the house for money, to say nothing of the testimony of Andres de Mesa, naming him as one of his companions in the raid.

The defense calls attention to the fact that appellant was a person well known to the deceased spouses so that he would not have dared commit the robbery without his face being covered, since there was light in the house. But the circumstance that he was well known to the deceased couple may have been one of the reasons that prompted him to silence them forever by putting them to death. And if he did not dispense the same treatment to Remedios Cordero, it may well be because he was not aware that he was well known to the latter, it not appearing that he had struck an acquaintance with her, while, on the other hand, the evidence shows that she was new in those parts as he hailed from Nueva Ecija, having come

to live in the house of the deceased spouses not long before the robbery.

The explanation for the delay in the arrest of the appellant despite the fact that his participation in the robbery was already known to the police on the night of the crime is to be found in the following testimony of the chief of police:

"Q. Can you tell the Court any particular reason why in spite of the fact that Remedios Cordero identified Felipe Suizo as one of the four perpetrators of the crime you did not arrest him until July 29?—A. In the first place, I did not know who is Iping Bachoy, and it took me time to know who he is. As the time I learned who he is, I did not effect the arrest right away knowing from Amy Cordero that he was not the one who killed the couple, so I decided not to effect the arrest right away, because if we did, it may cause the other to be in hiding. So, what I did was to arrest first the other because I know it was easy to arrest Iping Bachoy." (Pages 55-56, t. s. n. Rañeses.)

Not much importance can be attached to the testimony of Rafael Mendoza denying appellant's participation in the crime. The said testimony was given after Mendoza had already pleaded guilty, well knowing that any attempt on his part to free appellant from criminal liability would not in any way redound to his own prejudice.

There can be no doubt as to appellant's participation as principal in the commission of the robbery in question, it appearing from the evidence that he was the one who led the gang to the house of the deceased spouses, was the one who informed them that they could get something from there, and was also, the one who asked the inmates of the house to open the door. In addition, he was the one who watched Remedios Cordero in the dining room while his companions were ransacking the house. And being a participant in the robbery, he can not escape liability for the killing of the spouses just because he did not actually take part in the killing, there being no proof that he had made any endeavor to prevent it. (Par. 2, Art. 296, Rev. Penal Code; *People vs. Morados*, 40 Off. Gaz. [9th Sup.], No. 13, p. 75; *U. S. vs. Macalalad*, 9 Phil., 1; *U. S. vs. Tiongco*, 37 Phil., 951; *People vs. Salumddin*, 52 Phil., 670.)

The crime committed by appellant is that of robbery with homicide and falls under the first paragraph of article 294 of the Revised Penal Code, punishable with *reclusión perpetua* to death. The crime having been committed with the aggravating circumstances of nocturnity, band, and dwelling, not offset by any mitigating circumstance, the said penalty should be imposed in its maximum degree. But, there being no sufficient votes for the imposition of the death penalty, the sentence of life imprisonment meted out by the court below will have to stand together with the accessory penalties, indemnity and restitution imposed in the decision appealed from.

In so far as the judgment below conforms to this decision, the same is affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Páras, Feria, Bengzon, Tuason, and Montemayor, JJ., concur.

REYES, J.:

I hereby certify that Mr. Justice Pablo and Mr. Justice Perfecto voted in favor of this decision.

Judgment affirmed.

[No. L-2443. June 30, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. JOSE DEMETRIO Y LAGRADA ET AL., defendants.
MAURICIO ARROYO and ERNESTO POBLETE, appellants.

CRIMINAL LAW; ROBBERY WITH RAPE; COMMITTED BY A BAND; LIABILITY.—Under the facts proved in this case all the accused were liable as principals for the crime of robbery with rape in accordance with paragraph 2 of article 296; the mistaken allegation in the information that it was the accused J. D. who raped B. C. is immaterial and non-prejudicial, because even if neither of the appellants had committed the rape both of them would have been liable therefor provided it was committed by one of the band.

APPEAL from a judgment of the Court of First Instance of Manila. Natividad, J.

The facts are stated in the opinion of the court.

Angel S. Alvir for appellants.

Assistant Solicitor General Roberto A. Gianzon and Solicitor Augusto M. Luciano for appellee.

OZAETA, J.:

Jose Demetrio, Ricardo Mendoza, Ernesto Poblete, Eduardo Ignacio, Mauricio Arroyo, and John Doe *alias* Pedro were accused of robbery with rape in the Court of First Instance of Manila in an information which reads as follows:

"The undersigned accuses Jose Demetrio y Lagrada, Ricardo Mendoza y Ramirez, Ernesto Poblete y Mendoza, Eduardo Ignacio y Malam, Mauricio Arroyo and 'John Doe' *alias* Pedro, the true name and whereabouts of the last named accused being still unknown, of the crime of robbery with rape, committed as follows:

"That on or about the 25th day of August, 1946, during nighttime purposely sought, in Sta. Mesa Heights, Quezon City, but within 2-1/2 miles from the limits of the City of Manila, and, therefore, within the jurisdiction of this court, the said accused, conspiring and confederating together and mutually helping one another, wilfully, unlawfully and feloniously broke into and entered the house at No. 18 Pulo, Sta. Mesa Heights, in said Quezon City, inhabited by Severo Mapugay, Belen Cube, Carmen Cube and others, and once inside, by means of threats and intimidation, to wit: by threatening to do bodily harm with their firearms and knives with which they were all armed, upon the occupants of said house

should they resist, wilfully, unlawfully and feloniously, with intent of gain and without the consent of the owners thereof, took, stole and carried away the following personal property, to wit:

"Money in cash amounting to P500, belonging to the said Severo Mapugay;

"Various pieces of jewelry, all valued at P2,000, belonging to both Belen Cube and Carmen Cube, to the damage and prejudice of the said owners in the total sum of P2,500, Philippine currency.

"That on the occasion of said robbery, the accused Jose Demetrio y Lagrada, by the use of force and intimidation, to wit: by violently pushing the said Belen Cube and forcibly causing her to lie down on the floor and threatening to stab her with the knife he was then holding should she resist, wilfully, unlawfully and feloniously succeeded in having sexual intercourse with her against her will and consent.

"All contrary to law.

(Sgd.) "JOSE B. JIMENEZ
"Assistant Fiscal."

The case was tried only as to four of the accused, Ricardo Mendoza having escaped from detention before the trial and John Doe *alias* Pedro not having been arrested. The court found the said four accused guilty, stating "that the acts committed by the accused constitute the complex crime of robbery with rape." However, it sentenced only the accused Mauricio Arroyo for the complex crime of robbery with rape; and the accused Jose Demetrio, Eduardo Ignacio, and Ernesto Poblete, for robbery only.

Jose Demetrio and Eduardo Ignacio chose to abide by the decision of the trial court.

Mauricio Arroyo and Ernesto Poblete appealed to the Court of Appeals, which subsequently endorsed the case to this court because it was of the opinion that upon the facts of the case both appellants were guilty of robbery with rape, with the aggravating circumstances of the crime's having been committed by a band and in the dwelling of the offended parties, without any mitigating circumstance, and that therefore the penalty that should be imposed against them is life imprisonment.

It appears from the evidence that between 1:30 and 2:30 a.m. on August 25, 1946, a band of five malefactors, one of whom was armed with a carbine, another with a revolver, two with hunting knives, and one unarmed, broke into the house designated as No. 18 Pulong Street, Santa Mesa Heights, Quezon City, but within 2½ miles from the limits of Manila, which was inhabited by Severo Mapugay, Belen Cube, Carmen Cube, Jesus Cube, Natividad Fernando, Gregorio Fernando, Samuel Fernando, Alejandro Mapugay, Lolita Gabriel, and Romulo Bunao. These inmates of the house were aroused by the malefactors and herded at the point of guns into one of the rooms of the house where one of the intruders kept them under guard. The intruders then tied the hands of Severo Mapugay and another adult male companion and brought

them to an adjoining room where they were kept separate from the women. After gaining control of the situation the robbers ransacked the place and took money, jewelry, clothes, and other valuable personal properties belonging to Severo Mapugay and the sisters Belen and Carmen Cube amounting to P1,450 and P2,000, respectively. In the course of the robbery one of the robbers took Belen Cube, a twenty-two-year-old student of dentistry in the Centro Escolar University, to another room where by means of force and intimidation and despite her vigorous but futile resistance he succeeded in having carnal knowledge of her. Her companions could not succor her because they were being guarded by the other robbers.

At the request of Sgt. B. Herrera of Precinct No. 2, Dr. Angelo Singian, Medical Examiner of the Manila Police Department, performed a physical examination of Belen Cube on August 31, 1946, and found that her hymen had been recently lacerated at 3, 6, and 11 o'clock positions and that there was slight bleeding on the lacerations when he inserted his index finger. The doctor further certified: "The recent lacerations of the hymen indicate that the subject had been a victim of sexual intercourse in the past few days. From the appearance of the hymen and vagina, it is believed that she was a virgin previous to this sexual incident." (*See Exhibit G and testimony of Dr. Angelo Singian.*)

That same morning of August 25 Severo Mapugay reported the crime to Precinct No. 2 of the Manila Police Department located in the old Bilibid compound, describing the physical features of most, if not all, of the five robbers. According to Severo Mapugay, Carmen and Belen Cube, while the lights in their house were out at the time of the robbery, it was not dark because the lights of the neighboring houses were on and reflected through the shell windows of their house; that, moreover, the robbers carried flashlights which they constantly used during the commission of the robbery, specially while ransacking the place; and that those flashlights plus the reflection of the lights from the neighboring houses furnished sufficient illumination for them to see and remember the facial and physical features of the robbers.

It turned out that a series of robberies with rape and one robbery with homicide were committed in or near the same vicinity about the same time that the crime in question was committed. Based on the descriptions of the robbers furnished by the victims and on other data obtained in the course of the investigation, members of the Manila Detective Bureau succeeded in arresting the five herein accused on different dates: Jose Demetrio and Ricardo Mendoza on August 31, 1946; Eduardo Ignacio on September 4, 1946; and Mauricio Arroyo and

Ernesto Poblete on September 12, 1946. Eleven cases of robbery in band, some with rape and one with homicide, were presented against them.

A carbine (Exhibit A), which was presented and identified during the trial to be the same as or at least similar to that used by the robbers in committing the crime in question, was found in the possession of the appellant Mauricio Arroyo when he was arrested. He was also prosecuted for and convicted of illegal possession of the firearm.

On September 4, 1946, Severo Mapugay and Belen Cube were shown a group of detained prisoners in the detective bureau of the Manila Police Department, and right then and there they identified from among the group the accused Jose Demetrio, Eduardo Ignacio, and Ricardo Mendoza as three of the malefactors who robbed them in the early hours of August 25, 1946. When Belen Cube was asked to identify the one who raped her, she said that he was not among those present; but after Mauricio Arroyo was arrested on September 12, 1946, she positively pointed to him as the one who had raped her. She confirmed that identification of the said accused in her testimony during the trial.

Each of the four accused (excluding Ricardo Mendoza, who escaped and was not tried), upon being investigated by the police after the arrest, admitted his participation not only in the robbery in question but in other robberies with rape that had been reported to the police, and each named his companions in the commission of the crime. According to them, however, the amount of the loot was much smaller than that claimed by the victims in the present case. From their statements (Exhibits B, C, D, and E) which were taken by questions and answers in Tagalog and respectively signed by them, it appears that pursuant to a previous agreement they gathered at 1449 Lealtad Extension, Manila, where the accused Ernesto Poblete was residing, on the evening of August 24, 1946, spent part of the night in that house, and about 1:30 in the morning of August 25 they went together to the house at 18 Pulog Street, Quezon City, which they had agreed to rob. Jose Demetrio was then armed with a pistol; Mauricio Arroyo, with a carbine; and Eduardo Ignacio and Ernesto Poblete, with hunting knives. Ricardo Mendoza was not armed. They found the door of the house locked, but above it there was an opening which was not yet covered by a panel, as the construction of the house was still unfinished. Ernesto Poblete entered the house thru that opening and opened the door for his companions. However, the accused Eduardo Ignacio, Mauricio Arroyo, and Ernesto Poblete, in their respective statements, imputed the rape of Belen Cube to one Pedro or Pedring.

Jose Demetrio, in his statement Exhibit B, admitted having raped one Amada Ranido on the occasion of the robbery committed by him and his coaccused at 1533 Int. 14 G. Tuazon, Sampaloc, Manila, on the night of August 19, 1946, as well as Fortunata Sadian on August 28, 1946, at 1533 Int. 13-A G. Tuazon, Sampaloc, Manila; and that Mauricio Arroyo also raped the last-mentioned victim. Jose Demetrio, however, denied having participated in the robbery committed at 18 Pulog Street, Santa Mesa Heights. Nevertheless, he did not appeal from the sentence of conviction.

Each of the two appellants Mauricio Arroyo and Ernesto Poblete, testifying in his own behalf, limited himself to impugning the validity of his written statement before the detective bureau (Exhibit D by Mauricio Arroyo, and Exhibit E by Ernesto Poblete), saying in effect that he had been compelled to sign it thru force and intimidation.

We are inclined, however, to give more credence to the testimony of Detective Avelino Evangelista, who took the statements, to the effect that the appellants made their statements voluntarily and without the use of any force or intimidation. It is difficult to believe that the answers given by the appellants to the questions propounded to them were mere inventions of said detective; for, in the first place, the facts disclosed by said answers could have been known only to the appellants themselves and, in the second place, the answers reveal an intention of the declarants to minimize their responsibility for the crime. For instance, both appellants attributed to one Pedring the possession of the carbine as well as the commission of the rape. If Evangelista himself had fabricated the answers, he would have made them conform to the theory of the prosecution and would not have included therein any exculpatory indication.

In any event, even if we should disregard appellants' extrajudicial admissions, there would still remain the uncontradicted and unimpeached testimony of Severo Mapugay, Belen Cube, and Carmen Cube positively identifying the appellants as two of the robbers. That Belen Cube was correct and sincere in her identification of the appellant Mauricio Arroyo as the one who raped her on the night in question, may be seen from the fact that before the arrest of said appellant and when she identified Jose Demetrio, Eduardo Ignacio, and Ricardo Mendoza as three of the robbers, she positively informed the detective that the one who had raped her was not one of the said three accused. That shows that she had a fixed recollection of the identity of her assailant.

We cannot, therefore, entertain any doubt as to appellants' guilt.

The crime committed is that of robbery accompanied by rape, which is penalized in paragraph 2 of article 294 of the Revised Penal Code with *reclusión temporal* in its medium period to *reclusión perpetua*. This penalty must be imposed in the maximum degree, inasmuch as the crime was committed (1) by a band and (2) in the dwelling of the offended parties. (Article 14, paragraphs 6 and 3, Revised Penal Code.) These two aggravating circumstances were erroneously not taken into consideration by the trial court.

The second paragraph of article 296 provides that any member of a band who is present at the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent it. In the present case the offense charged against all the accused was the complex crime of robbery with rape. It was fully established during the trial that on the occasion of the robbery Belen Cube was raped by one of the robbers. Not only was there no proof introduced by either of the appellants that he attempted to prevent the rape but, on the contrary, the prosecution proved beyond reasonable doubt that the appellant Mauricio Arroyo was the one who committed the rape and that his companions, far from preventing him from committing the rape, facilitated its commission by guarding and preventing the other inmates of the house from succoring his victim.

Since under such circumstances all the accused were liable as principals for the crime of robbery with rape in accordance with paragraph 2 of article 296, the mistaken allegation in the information that it was the accused Jose Demetrio who raped Belen Cube is immaterial and non-prejudicial, because even if neither of the appellants had committed the rape both of them would have been liable therefor provided it was committed by one of the band. (See also *U. S. vs. Tiongco*, 37 Phil., 951; *U. S. vs. Bretaña*, 49 Phil., 444.)

The judgment appealed from is modified in the sense that the appellants Mauricio Arroyo and Ernesto Poblete shall each suffer *reclusión perpetua* and shall jointly and severally indemnify Belen Cube in the sum of ₱1,000. In all other respects not inconsistent herewith the sentenced appealed from is affirmed, with the costs of this instance against the appellants.

Moran, C. J., Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

OZAETA, J.:

I certify that Mr. Justice Pablo voted for the above modification of the sentence appealed from.

Judgment modified; penalty increased.

[No. L-2852. June 30, 1949]

VICTOR A. BOROVSKY, petitioner, *vs.* THE COMMISSIONER OF IMMIGRATION and THE DIRECTOR OF PRISONS, respondents.

1. ALIEN; DEPORTATION; RIGHT OF GOVERNMENT TO DETAIN ALIEN FOR REASONABLE LENGTH OF TIME.—Pending arrangements for his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time.
2. ID.; ID.; HABEAS CORPUS; UNLESS THE ALIEN CANNOT BE DEPORTED OR IS BEING INDEFINITELY IMPRISONED, WRIT WILL NOT ISSUE.—Unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it cannot deport him or unless the detainee is being held for too long a period, courts will not interfere.

ORIGINAL ACTION in the Supreme Court. Habeas Corpus.

The facts are stated in the opinion of the court.

The *petitioner* in his own behalf.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Lucas Lacson* for respondents.

BENGZON, J.:

Victor A. Borovsky, a stateless citizen though a Russian by birth according to his allegations, prays for release from the custody of the Director of Prisons, who holds him for purposes of deportation.

In December, 1946, the President of the Philippines ordered petitioner's deportation as undesirable alien, after a proper investigation by the Deportation Board upon charges of being a vagrant and habitual drunkard, engaged in espionage activities, whose presence and conduct endangered the public interest. Pursuant to such order, Borovsky was placed aboard a vessel bound for Shanghai; but the authorities there declined to admit him for lack of the proper visa, which the Chinese consulate in this country had refused to give. Wherefore he was brought back to the Philippines. Thereafter he was temporarily released pending further arrangements for his banishment. And when subsequently a Russian boat called at Cebu, Borovsky was re-arrested and transported to Cebu for deportation; however, the captain of the boat declined to take him, explaining he had no permission from his government to do so. Wherefore the petitioner is now confined in the premises of the New Bilibid Prisons—not exactly as a prisoner—while the Government is exerting efforts to ship him to a foreign country.

There is no question as to the validity of the deportation decree. It must be admitted that temporary detention is a necessary step in the process of exclusion or expulsion of undesirable aliens and that pending arrangements for

his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time. However, under established precedents, too long a detention may justify the issuance of a writ of habeas corpus.¹

The meaning of "reasonable time" depends upon the circumstances, specially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the governments concerned and the efforts displayed to send the deportee away.² Considering that this Government desires to expel the alien, and does not relish keeping him at the people's expense, we must presume it is making efforts to carry out the decree of exclusion by the highest officer of the land. On top of this presumption assurances were made during the oral argument that the Government is really trying to expedite the expulsion of this petitioner. On the other hand, the record fails to show how long he has been under confinement since the last time he was apprehended. Neither does he indicate neglected opportunities to send him abroad. And unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation³ or unless the Government admits that it cannot deport him⁴ or unless the detainee is being held for too long a period our courts will not interfere.

In the United States there were at least two instances in which courts fixed a time limit within which the imprisoned aliens should be deported⁵ otherwise their release would be ordered by writ of habeas corpus. Nevertheless, supposing such precedents apply in this jurisdiction, still we have no sufficient data fairly to fix a definite deadline. Petition denied. No costs.

Moran, C. J., Ozaeta, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

•I hereby certify that Mr. Justice Pablo voted to deny the petition.

PARÁS, J., dissenting:

I agree to a temporary detention of a person to be deported, but said detention must be for a reasonable length of time. In this particular case, the deportation order was issued in 1946. If the Government is unable

¹ *Wong Wing vs. U. S.*, 163 U. S., 228; *Administrative Control of Aliens by Van Vleck* p. 184, citing *Chumura vs. Smith*, 29 Fed. (2d), 287, and *Ex parte Mathews*, 277 Fed., 857.

² Cf. *Clark, Deportation of Aliens* p. 423; *Van Vleck op. cit.* p. 183 *et seq.* *Ross vs. Wallis*, 279 Fed., 401.

³ *Ross vs. Wallis, supra.*

⁴ *Bonder vs. Johnson*, 5 Fed. (2d), 238.

⁵ Two months, *Caranica vs. Nagle*, 28 Fed. (2d), 955; four months, *Ross vs. Wallis, supra.*

to carry out said order within a reasonable period, it should in the meantime release the petitioner, unless he has committed a crime, in which case the law should take its due course. The theory that the detention of a person is to prevent the commission of a crime, is more in consonance with the idea of concentrating suspected or would-be criminal. In a democracy, however, every person is entitled to freedom, subject to arrest only for actual commission of a crime. At most, I can agree to a further detention of the herein petitioner, provided that he be released if after six months, the Government is still unable to deport him.

TUASON, J.:

I concur in this dissenting opinion except that two months constitute, in my judgment, reasonable time.

FERIA, J.:

I dissent from the majority. The Government cannot indefinitely detain the petitioner until it may deport the petitioner, without violating the right of the petitioner not to be deprived of his liberty without due process of law.

Petition denied.

[No. 48494. June 30, 1949]

BANQUE GENERALE BELGE, S. A. DE AMBERES, BELGICA, DEUTSCH ASIATISCHE BANK, and UNION COMMERCIALE D'OUTREMER, S. A., plaintiffs and appellants, *vs.* WALTER BULL & Co., INC. and WALTER BULL, defendants and appellants.

COMMERCIAL COMMISSION: CORPORATION AS A PARTY TO A CONTRACT THROUGH AND BY ITS PRESIDENT; LIABILITY OF THE PRESIDENT.—The president and manager of a corporation who entered into and signed a contract in his official capacity, cannot be made liable thereto in his individual capacity in the absence of stipulation to that effect. It is elementary that a corporation has a personality separate and distinct from the persons composing it.

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Manuel Escudero for plaintiffs and appellants.

Juan L. Orbeta for defendants and appellants.

PARÁS, J.:

On June 13, 1932, the plaintiffs filed a complaint in the Court of First Instance of Manila against the defendants. Under the first cause of action, the plaintiffs seek to terminate a commercial commission and to recover from the

defendants all the properties covered by said commission. Under the second cause of action, it is prayed that the defendants be required to present monthly statements of accounts from September 1, 1931. Under the third cause of action, the plaintiffs seek to recover from the defendants the balances found due and owing to the plaintiffs. The defendant Walter Bull & Co., Inc. questions the personality of the plaintiffs; denies having violated the commercial commission mentioned in the complaint; and, by way of counterclaim, seeks to recover from the plaintiffs the sum of ₱1,957.07 due to said defendant under the commission, and the sum of ₱283,786.49 as damages resulting from the preliminary attachment issued at the instance of the plaintiffs upon the commencement of their complaint. The other defendant, Walter Bull, also disputes the personality of the plaintiffs; alleges that said defendant was maliciously included in the complaint, as his participation in the commission mentioned in the complaint was in his official capacity as president and manager of the defendant corporation Walter Bull & Co., Inc.; and as counterclaim seeks to recover from the plaintiffs the sum of ₱75,000 as damages suffered by reason of the preliminary attachment obtained by the plaintiffs at the commencement of the action. After trial, the Court of First Instance of Manila rendered, on June 2, 1941, a decision absolving the defendants from the complaint, absolving the plaintiffs from the defendants' counterclaims, and ordering that the unsold goods covered by the commercial commission be delivered to the plaintiffs after payment of warehouse fees and other expenses, if any, with costs against the plaintiffs. From this judgment both the plaintiffs and the defendants appealed. The plaintiffs have assigned sixteen errors, while the defendants, five.

The record of this case is very voluminous. After examining the exhaustive briefs and memoranda of both parties, in the light of the evidence presented, we are constrained to uphold the appealed decision.

The commercial commission referred to in the complaint and identified in the record as Exhibit A, was executed on November 16, 1931, between Banque Generale Belge, Deutsch Asiatische Bank, and Union Commerciale D'Outremer, represented by Atty. Alfredo Chicote, as principal, and Walter Bull & Co., Inc., represented by its president Walter Bull, as agent. The subject matter of the commission consisted of three sets of properties, namely, "Paramount" goods, "Tungsha" goods and "Mercantile Bank" goods, having a total value of ₱55,353.99.

We shall first consider the appeal of the plaintiffs. Their assignments of error may substantially be narrowed down to the general contentions that: (1) The defendants violated various conditions of the commission

and committed various misappropriations. (2) The total value of the goods covered by the commission was ₱70,226.53, and not ₱55,353.99 as found by the trial court. (3) The trial court should have ordered the payment to the plaintiffs of the sum of ₱4,387.44, the proceeds of the sale of goods belonging to the commission and deposited with the sheriff which was later delivered to the defendants upon the latter's filing of a bond. (4) The accounts presented by the defendants are erroneous and should have been disallowed.

The trial court was correct in holding that Walter Bull cannot personally be liable under the commission, inasmuch as he signed the contract in his official capacity as president and manager of the defendant corporation Walter Bull & Co., Inc. It is true that the contract provided that the commission was in consideration of Walter Bull and that if the latter should cease to be the manager of the corporation, the commission would *ipso facto* be terminated. But this stipulation did not personally bind Walter Bull to the contract, although it might in fact have led the plaintiffs to appoint the corporation as their agent. If the intention was to bind Walter Bull in his individual capacity, the contract should have so provided. It is elementary that a corporation has a personality separate and distinct from the persons composing it.

The capital mistake of the plaintiffs in supposing that the defendant corporation is liable to the plaintiffs upon liquidation of the commercial commission, is in assuming that the value of the properties covered by the commission is ₱70,226.43; and this mistake is obviously due to the fact that the plaintiffs have considered the value of the goods of the "Mercantile Bank" group as being ₱25,756.41, instead of, as correctly found by the trial court, only some ₱11,001.46.

The principal violation of the commission imputed by the plaintiffs to the defendants consists in the charge that the defendants sold goods at prices below those specified in the commission. The defendants admit having made some such sales, but contend that they were known to and authorized by the plaintiffs; and the trial court found for the defendants. We are inclined to sustain the latter's theory. The supporting testimony of Walter Bull is corroborated by a letter of the Union Commerciale D'Outremer (Exhibit F) addressed to Chicote, authorizing the sale of goods at as low as 60 per cent of the inventory prices, in order to speed up liquidation. The fundamental reason is that the goods, if not actually in bad condition, were hard to conserve. C. Kelling, who had the "Paramount" goods for six months previous to the date when the commercial commission came into effect, had manifested that they were unsaleable garbage (basuras inven-

dibles) and that the same were stored in a hot and unsuitable warehouse (Exhibit I). In a motion (Exhibit 13) filed in civil case No. 38764 by Chicote, the latter alleged that the stock consisting mainly of medicinal products and textiles were very difficult to conserve. It is true that the inventory (Exhibit J) does not show that the goods in question were in bad condition, but the same is not conclusive. In the first place, the condition of the stock could not be determined from mere appearances of the containers. In the second place, the point is immaterial in view of the subsequent authority given by the plaintiffs to sell even at 60 percent of the inventory prices.

Moreover, with respect to certain "Paramount" and "Tungsha" goods sold by the defendants prior to November 16, 1941, when the commission was entered into, it is evident that the prices specified in the inventory cannot control, notwithstanding the fact that the commission provided that the terms thereof retroacted to September 1, 1931. The reason is simple and it is that said prices could not have been known prior to the existence of the commission. We believe that the retroactive effect of the contract was intended to cover only the stock actually in existence at the time of the execution of the commercial commission.

The plaintiffs contend that the defendants simulated sales of certain goods to O. Lagman and A. Villanueva (employees of the defendant corporation) under invoices Nos. 208 and 209 in order to appropriate for themselves said goods. This contention was also properly overruled by the trial court. There is evidence to the effect that the alleged transfers were made with the knowledge and conformity of Chicote, the representative of the plaintiffs, as an arrangement calculated to expedite sales. Under the arrangement, Lagman and Villanueva did not pay anything and the goods were nominally transferred back to the defendant corporation, for the latter to advertise and sell the same in its own name, the purpose being to boost sales and avoid conflicts with the Bureau of Internal Revenue. The operation resulted in the loss to the defendants of some ₱508.71 (Exhibit 287). The advertisements were published in several weeklies (Liwayway, Hiwaga and Sampagueta), in addition to pamphlets circulated by Bull. Furthermore, Chicote's nephew, Lalana, was the cashier and assistant accountant of the defendant corporation and must undoubtedly have informed Chicote of all the important operations and transactions of the defendant corporation. It appears also that the unsold goods covered by invoices No. 208 and No. 209 were returned to the credit of the plaintiffs.

With respect to the cash sales evidenced by Exhibits L-9, L-10 and L-11 which the plaintiffs contend are also

simulated, we agree with the trial court that they were known by Chicote and his nephew Antonio Lalana and were *bona fide* sales to third parties.

The failure of the defendant corporation to submit monthly statements of accounts or to pay to the plaintiffs the monthly balances is now of no moment, because said failure is at most merely a just cause for terminating the commercial commission. The important thing is that statements of accounts (Exhibits 471 and 472) were presented by the defendants within 30 days after the commencement of the trial, and that said statements (showing no balance in favor of the plaintiffs) have been approved by the trial court.

The plaintiffs contend that the defendants collected commission on the sales and not, as stipulated in the contract, on the amounts actually collected. The charge is more apparent than real. It is admitted by the defendants that, at the suggestion of their accountant (J. Turiano Santiago), the entries in their books show the collection of their authorized commission of 10 per cent on the amounts of all sales, in order to avoid differences with the Bureau of Internal Revenue. However, in cases of uncollected accounts or returned merchandise, the defendants made corresponding book entries for readjustment. We are of the opinion that the trial court committed no error on this aspect of the case, especially when, even assuming that the accounting practice followed by the defendants was irregular, the result conformed to the agreement contained in the commercial commission. With respect to the other 5 per cent charge against the plaintiffs, also assailed by the latter, it may be pointed out that it represented a certain fixed amount plus 3 per cent (amounting in all to 5 per cent paid to agents and resellers, and this is expressly authorized by the commission.

It is insisted by the plaintiffs that the defendants were without authority to continue with the commission after the filing of the complaint. This is clearly erroneous. The purpose of the complaint is to obtain a judicial declaration terminating the contract, and as long as the court had not given the signal for the defendants to stop, the latter were not legally bound to do so. The record does not show that the defendants were preliminarily ordered to refrain from performing the contract. Although the goods covered by the commission had been attached, they were nevertheless released after the dissolution of the attachment, its logical consequence being the return of the goods to the defendants from whom they were levied upon. Moreover, there seems to be no ground for plaintiffs' criticism, as it appears that the defendants had offered to turn over to Alfredo Chicote, plaintiffs' representative, all unsold merchandise, but the latter refused.

We find no merit in the various criticisms of the plaintiffs directed to the proposition that the defendants, in their statements of accounts, charged against their principals unauthorized or unnecessary expenses. Indeed, a preponderance of the evidence supports the view that the defendants limited the expenses of the commission to the items specified in the contract, namely: P100 for rental of office; premiums for fire insurance; sales taxes; personnel expenses not exceeding P200 a month; P50 for delivery and collection expenses.

As regards the plaintiffs' claim that the amount of P4,387.44 representing the proceeds of sales by the sheriff during the existence of the attachment, and later delivered to the defendants upon the filing by the latter of a bond, should have been ordered by the trial court to be returned to the plaintiffs, it is sufficient to state that said amount, which consisted of the proceeds of sales not only of the goods belonging to the commission but also of those belonging to the defendant corporation, had been absorbed and included in the statement of account (Exhibit 472) presented by the defendants before the trial court. Upon the approval thereof by the court, it became unnecessary for it to make any pronouncement on the matter.

The "Mercantile Bank" goods came to be the subject of the commercial commission after the defendants had paid to the Mercantile Bank of China the sum of P7,500, the amount of the latter's liens on the property. It is alleged by the plaintiffs that they were opposed to the transaction and that the same was in fact carried out for the sole benefit of the defendants. This contention is unfounded. The evidence shows that Alfredo Chicote was furnished by the Bank Commissioner with a copy of his motion (Exhibit 1-6) to sell said goods to the defendant corporation for the benefit of the Union Commerciale D'Outremer and that he stamped his conformity to said motion. It also appears that the sum of P5,540.93 was paid with the last cash balance in favor of the plaintiffs and the remaining sum of P1,959.07 with money of the defendant corporation. The result is that, practically speaking, it cannot be contended by the plaintiffs that there never was any cash balance in their favor, since, in lieu of the amount of P5,540.93 representing proceeds of previous sales under the commission, the plaintiffs were credited with the "Mercantile Bank" goods.

The foregoing discussion disposes of the fundamental contentions of the plaintiffs which make it superfluous for us to further deal with various accessory details or items mentioned in the voluminous briefs and memoranda of the parties. It follows also that the statements of accounts presented by the defendants and approved by the court are in order.

We now come to the appeal of the defendants. In view of the result reached as to plaintiffs' appeal, it is unnecessary for us to consider the defense set up by the defendants in the lower court, having reference to the personality of the plaintiffs to sue. Neither is it necessary to inquire into the action of the trial court in disallowing the sum of P1,957.07 appearing in the statements of accounts presented by the defendants as being due in favor of the defendant corporation, for the reason that the point has not been made the subject of any assignment of error by the defendants.

The errors assigned by the defendants are directed to the failure of the trial court to award damages in favor of the defendants as a result of the preliminary attachment obtained by the plaintiffs at the commencement of the action. The defendants have made an elaborate discussion tending to establish the amount of alleged damages which the trial court found to be too speculative. We are nevertheless convinced that the plaintiffs, in obtaining the preliminary attachment, acted in good faith, and this circumstance is fatal to any award for damages. It is true that the defendants have been absolved from the complaint, but this does not go to show that the plaintiffs acted with malice in attaching defendants' properties. The result of this action cannot affect the *bona fide* belief of the plaintiffs in the justness of their claim against the defendants.

The appealed judgment is therefore affirmed, without costs. So ordered.

Moran, C. J., Ozaeta, Feria, Bengzon, Tuason, Montemayor, and Reyes JJ., concur.

PARÁS, J.:

I certify that Mr. Justice Perfecto voted to affirm the decision.

Judgment affirmed.

[No. L-1803. July 5, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
MOISES ACOSTA, defendant and appellant

CRIMINAL LAW; EVIDENCE; ACCUSED'S MORAL CHARACTER.—The prosecution cannot initially attack the moral character of the accused, unless the same is put in issue by him.

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. De los Santos, J.

The facts are stated in the opinion of the court.

Bernardo de la Peña, Alejo Mabanag and Jose E. Elegir for appellant.

Assistant Solicitor General Carmelino G. Alvendia and Solicitor Antonio A. Torres for appellee.

MORAN, C. J.:

On December 20, 1944, at about 8 o'clock in the evening, in barrio Lantag, Tagudin, Ilocos Sur, Petra Aguilan, an old woman about sixty years of age, was in the kitchen of her house with her two sons, Florencio and Narciso Lacasandile, and the latter's wife, Segunda Somera. They had barely finished supper and there was some argument as to whether some fish should have been eaten that evening or kept for breakfast the following morning. Appellant Moises Acosta, who was stationed in a "garita" some distance away as a *huko* guard of the guerrilla forces and who was drunk, heard the argument and proceeded there to investigate. Upon arriving at the foot of the stairs of Petra Aguilan's house, he demanded—"Who are complaining here, otherwise I will kill." Whereupon, Petra Aguilan replied—"No one is complaining," and proceeded to descend the stairs which consisted only of two steps. As she went down, appellant Acosta met her and immediately stabbed her in the abdomen below the left breast with a bolo he was carrying. Upon being wounded, Petra Aguilan rushed to a nearby house where a Dr. Gerardo Espejo was residing.

Meanwhile, Narciso Lacasandile who saw the stabbing of his mother, hurried down from the kitchen, disarmed appellant, placed the bolo under a bed (papag), and hastened to help his mother who was being brought back by Doctor Espejo. Petra Aguilan was laid down on her "papag" and while Doctor Espejo was attending to her, Narciso grabbed a piece of bamboo and hit appellant on the back. Narciso was immediately subdued by the others who were present. Meanwhile, Doctor Espejo was questioning Petra Aguilan as to the identity of her assailant and she answered that Moises Acosta was the one who stabbed her. When appellant Acosta, who remained in the room but was moving about restlessly, heard her statement, he denied having stabbed her and claimed that it was her own son Narciso who did the stabbing. Petra Aguilan did not make any reply and she died very shortly thereafter. Death was due to hemorrhage and shock according to Doctor Espejo in the medical certificate issued by him and in his testimony during the trial.

These facts have been clearly and indubitably established by the testimonies of the prosecution witnesses. They are Dr. Gerardo Espejo, who brought the wounded woman back to her house and who questioned her before she died as to the identity of her assailant; Narciso Lacasandile, who saw the stabbing from the kitchen, who disarmed appellant Acosta and who was at his mother's bedside when she identified appellant and when she died; and, Segunda Somera, wife of Narciso, who also witnessed the crime from the kitchen and who was with her mother-in-law until she died. The testimonies of these witnesses

with regard to the dying declaration of Petra Aguilan are supported by the testimonies of appellant Acosta himself and of a defense witness, Melchor Espiritu, who testified that the statement of the dying woman which he wrote down was: "There is no other else who stabbed me except Moises; he hurt me with a bolo."

The evidence for the defense consists only of the testimony of Melchor Espiritu which supports the prosecution's evidence of the dying declaration, and the testimony of appellant Acosta himself. Appellant alleges that he went to the house of Petra Aguilan to stop the quarrel; that he was met by Narciso who tried to grab his bolo to use it against his brother Florencio, and that in the ensuing struggle for the bolo, the old woman accidentally received a bolo thrust. This version does not ring true and is belied by the dying declaration of the victim as fully corroborated by eye-witnesses to the tragedy.

One of the errors ascribed by the appellant to the appealed decision is the admission of Exhibit C intended to establish appellant's arrests and convictions for various offenses in the past. It is rightly argued by appellant that under Rule 123, section 15, prosecution cannot initially attack the moral character of the accused, unless the same is put in issue by him. The lower court's error, however, is immaterial for even without Exhibit C the evidence of appellant's guilt is beyond reasonable doubt.

The lower court found appellant guilty of murder with the qualifying circumstance of abuse of superior strength which does not appear to be alleged in the information. Neither may that circumstance be regarded as aggravating, no advantage having been taken actually by appellant of his superior strength to accomplish his criminal purpose.

The felony committed is homicide with the mitigating circumstance of intoxication offset by the aggravating circumstance of disrespect of age and sex.

For all the foregoing, the judgment of the lower court is modified and appellant Moises Acosta is hereby sentenced to suffer an indeterminate penalty of 10 years of *prisión mayor* to 17 years of *reclusión temporal*, with the accessories of the law; to indemnify the heirs of the deceased Petra Aguilan in the sum of ₱2,000; and to pay the costs. It is so ordered.

Ozaeta, Feria, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

PARÁS, J., dissenting:

I believe the facts to be, as contended by the appellant, that in the evening of December 20, 1944, the appellant

went to the house of Petra Aguilan upon hearing a rather loud quarrel taking place therein; that upon seeing Narciso and Florencio Lacasandile (sons of Petra), exchange words, the appellant, in his capacity as a homeguard, tried to make a peace move, whereupon Narciso, after rebuking the appellant for his intervention, snatched the bolo from the waist of the appellant and thereafter threatened to use it against his brother Florencio. It was to avoid this contingency that the appellant thereupon proceeded to recover the weapon from Narciso who, however, offered resistance. In the course of the struggle between the appellant and Narciso, Petra Aguilan approached with a view to pacifying Narciso and, unluckily for her, she had so come within a striking distance of the two that she was hit by the bolo which was still in the hand of Narciso. That blow caused Petra's death, for which the appellant should of course not be held responsible.

The theory of the defense is more logical under the following features of the case: (1) There is absolutely no hint in the record that the appellant had any motive for killing Petra Aguilan. Upon the other hand, it is undisputed that there was a quarrel, and it is not improbable that Narciso was in angry mood when the appellant came in. It is true that the appellant is alleged to have been drunk, but it has not been shown that he was in such a condition as not to have known what he was doing. On the contrary, there are indications that his mind was clear. (2) It is pretended that Narciso saw the appellant abruptly stab Petra, and yet it is admitted that Narciso thereafter merely disarmed the appellant and put the bolo under a bamboo bed, and that it was only when Narciso heard his mother incriminate the appellant that Narciso grabbed a piece of bamboo and hit the appellant in the back. If the latter fact is true, we cannot believe that Narciso actually saw the alleged stabbing, for the simple reason that he would have taken some retaliatory measures right after his mother was attacked without cause, and should not have waited until his mother pointed to the appellant as the author of the assault. At any rate, if Narciso was really an eyewitness, he would naturally have followed a more revengeful course than merely disarming the appellant and putting his bolo under the bamboo bed. (3) It is not denied that the appellant calmly remained in the premises, and when he heard Petra Aguilan accused him, he promptly denied the same and stated that it was her son who did it. Appellant's behavior is quite inconsistent with a guilty conscience. (4) It is surprising that Florencio Lacasandile, admittedly in the house on the occasion in question, was not presented as a witness for the prosecution. The explanation is probably that he was an active participant in quarrel, particularly as against Narciso.

In view of the above considerations, I vote for the acquittal of the accused Moises Acosta.

BENGZON, J.:

I concur in the above dissent.

Judgment modified; penalty increased.

[Causa Administrativa No. 36. Julio 7, 1949]

En el asunto de JOSE TOPACIO NUENO

ABOGADOS; ABOGADO Y CLIENTE; MALAS PRÁCTICAS; VIOLANDO UN FIDEICOMISO PROFESIONAL.—El recurrido, violando un fideicomiso profesional, no empleó el dinero confiado a él en beneficio de sus clientes, como éstos esperaban, sino de otro modo. Él como miembro del foro es culpable de práctica antiprofesional.

JUICIO ORIGINAL en el Tribunal Supremo. Malas prácticas.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. José Topacio Nueno en su propia representación.

PABLO, M.:

Se trata de una acusación por malas prácticas contra el Abogado Sr. José Topacio Nueno presentada por sus clientes.

Las pruebas obrantes en autos establecen los siguientes hechos: En 11 de noviembre de 1946, se dictó sentencia en la causa de desahucio No. 42 del Juzgado de Paz de Pasay, Rizal, condenando al demandado Hanz Galewsky a pagar la cantidad de ₱450 mensual desde el primero de octubre de 1946 hasta que él y su subarrendatario Fred Redfern desalojasen la casa No. 8, 1399 F. B. Harrison, Pasay, Rizal, con las costas. En 29 de noviembre el Abogado Sr. Nueno, en representación de los demandados, presentó su aviso de apelación. En febrero de 1947, Fred Redfern entregó a su abogado la cantidad de ₱1,350 para ser depositada como renta de la finca correspondiente a los meses de diciembre, 1946 y enero y febrero de 1947; de esta cantidad solamente depositó en 24 de febrero la suma de ₱900 rentas para los meses de diciembre de 1946 y enero de 1947, reteniendo él la cantidad de ₱450 que corresponde al mes de febrero del mismo año. En abril de 1947, a requerimiento del Abogado Sr. Nueno, Redfern y Galewsky entregaron a él ₱900 para alquiler correspondiente a los meses de marzo y abril de 1947, cantidad que no depositó en el juzgado, y en la segunda quincena de junio, Redfern y Galewsky entregaron a él otra cantidad de ₱900 para ser depositada en el juzgado como rentas correspondientes a los meses de mayo y junio del mismo año, pero tampoco la depositó.

En 20 de junio, por medio de su nuevo abogado Sr. Crispín D. Baizas en sustitución de su Abogado Sr. José

Pardo, que falleció, el demandante presentó una moción pidiendo que se le permitiese retirar de la escribanía las rentas de la finca, pero al descubrir que no se había hecho ningún depósito, en 23 de junio presentó otra moción pidiendo la inmediata ejecución de la decisión del Juzgado de Paz. En la vista de dicha moción en 28 de junio, el Abogado Sr. Nueno pidió 3 días de plazo para presentar oposición por escrito, y el Hon. Juez García, en sesión abierta del Juzgado en Pasay, Rizal, le concedió la petición. Después de oír a las dos partes, dicho juez en 9 de julio concedió a los demandados 5 días de plazo para depositar los alquileres, y en caso contrario, se ordenaría la ejecución como pedía el demandante. En el mismo día, por la ausencia del Abogado Sr. Nueno y por deferencia al Abogado del demandante, se aplazó la vista de la causa para el primero de agosto.

En 15 de julio, el abogado Sr. Baizas otra vez presentó una moción pidiendo la ejecución inmediata de la sentencia del Juez de Paz por no haber el abogado de los demandados depositado dentro del plazo de 5 días los alquileres correspondientes a los meses de febrero, marzo, abril, mayo, y junio, y en el mismo día el abogado Sr. Nueno presentó una moción pidiendo plazo hasta el fin del mes para depositarlos. El 21 de julio el Hon. Juez García concedió otro plazo de 5 días a contar del 22 de julio para que los demandados depositasen en la escribanía del Juzgado de Rizal todos los alquileres debidos.

En primero de agosto, el abogado Sr. Baizas, por tercera vez, presentó una moción pidiendo la ejecución de la sentencia porque los demandados habían dejado de hacer el depósito a pesar de haber transcurrido más de 5 días desde el 22 de julio según la última orden. Accediendo a esta moción, el Hon. Juez Castelo, en 14 de agosto de 1947 ordenó la ejecución de la sentencia. En 20 de agosto el abogado Sr. Nueno pidió la reconsideración de esta orden de ejecución, y el Hon. Juez Castelo el 28 de agosto dictó una orden que dice en parte lo siguiente:

"The defendant having failed to make the monthly deposits from February to August 1947, inclusive, the writ of execution should be given due course.

"Considering, however, the explanation given by Attorney Nueno in open court to the effect that the defendant has delivered to him on time the monthly rentals corresponding to the period from February to June 1947 for the purpose of depositing the same with the Court and that he instead deposited the money in the bank, this Court is inclined to give the defendants or his lawyer a chance to make the said deposits with the Court. For this purpose the defendants are hereby given five days from the receipt of this order to make the said deposit of rentals corresponding to the period from February to August 1947. Failure to do so the writ of execution shall be given due course."

En 2 de septiembre, el abogado Sr. Nueno pidió que se le concediese 10 días de plazo para hacer el depósito, y en la vista de la moción, él admitió que recibió de sus

clientes P2,250 y que no los depositó en la escribanía sino en el banco; por eso, en 6 del mismo mes, el Hon. Juez Castelo le concedió otros 5 días de plazo para depositar las rentas correspondientes a los meses de febrero hasta agosto, 1947, y en caso contrario, se ejecutaría la sentencia del Juez de Paz. Este plazo fué después prorrogado a cinco días más.

Pero no habiendo el Abogado Nueno cumplido con sus repetidas promesas de depósito, sus clientes, los aquí recurrentes, tuvieron que arbitrar, mediante préstamos, la suma de P2,250, entregándola después al demandante, Ramón de la Rama, para evitar la ejecución de la sentencia. Y en el entretanto, pidieron a su abogado les devolviera la cantidad ya mencionada de P2,250 que le habían entregado para depósito, y sólo prepararon su denuncia por malas prácticas cuando, después de este requerimiento, su abogado no quiso o no pudo efectuar la devolución. Después de preparada la denuncia, entregáronla al Juez Castelo con el ruego de que, antes de darle curso, instruyera al Abogado Nueno que reembolsarse a sus clientes la cantidad por ellos reclamada. Así lo hizo el Juez, pero no habiendo el abogado hecho el reembolso dentro del plazo fijado a ese fin, se dió curso a la denuncia facilitando al recurrido copia de la misma, con instrucciones de que la contestara dentro del plazo de cinco días. El recurrido presentó su contestación juntamente con una moción de los recurrentes, en la que pedían el sobreseimiento de la denuncia por haber ya recibido del recurrido la suma de P2,250. Pero el sobreseimiento fué denegado, porque asuntos administrativos contra abogados por malas prácticas no pueden ser objeto de transacción.

El recurrido alega, en su defensa, que su omisión de depositar los alquileres vencidos, se debió a su convicción de que las leyes y los reglamentos, que requerían ese depósito, habían quedado tácitamente derogados o modificados por la Ley de la República No. 66 y por la Orden Ejecutiva No. 62, y tan es así que presentó una petición de certiorari ante el Tribunal Supremo para anular las órdenes del Juzgado, en las que se requería el depósito de los alquileres que iban venciendo. Esta alegación del recurrido está desmentida por sus propios actos, pues si fuera verdad que sinceramente creía que no había necesidad de hacer tales depósitos, no se comprende por qué depositó los alquileres correspondientes a los meses de diciembre de 1946 y enero de 1947, y exigió a sus clientes que depositasen los alquileres correspondientes a los meses subsiguientes. Y no se comprende tampoco por qué no lo dijo así al Juzgado en lugar de estar pidiendo plazos adicionales para hacer los depósitos requeridos. Y ya que presentó al Tribunal Supremo una petición fundada en su ya mencionada creencia, no se comprende por qué, después de haberse decidido ese asunto en contra suya,

Alega también el recurrido que si retuvo los alquileres en su poder y los guardó bajo su propia responsabilidad, fué con el conocimiento y consentimiento de sus clientes. Pero las pruebas claramente demuestran que sus clientes le entregaron las cantidades ya mencionadas; no para que las retuviera y guardara en su poder, sino para depositarlas en el Juzgado, tan es así que, cuando se enteraron de que dicho abogado había dejado de depositarlas, le requirieron repetidas veces que se las devolviera, y como el abogado no podía efectuar la devolución, ellos mismos, para evitar la ejecución, tuvieron que pedir un préstamo para cubrir la suma total de alquileres no depositados. Después de haber reunido esa suma y después de haberla entregado al demandante, requirieron a su abogado para que les reembolsara dicha cantidad, e hicieron el requerimiento repetidas veces, la última mediante el Juez Castelo, a quien presentaron su denuncia por malas prácticas, pero rogándole al mismo tiempo que no diera curso a la misma si el abogado devolvía el dinero. Y como antes ya se ha dicho, se dió curso a la denuncia solamente porque el recurrido no pudo efectuar la devolución requerida a pesar de los consejos que le diera el Juez. Todas estas circunstancias demuestran que el abogado retuvo las cantidades en cuestión sin conocimiento ni consentimiento de sus clientes.

Es más: de las pruebas se desprende que la omisión del recurrido de depositar los alquileres vencidos, fué debida a que carecía de fondos suficientes en las diferentes fechas en que el Juzgado le dió plazos adicionales para depositar los alquileres vencidos. Hacia el 9 de julio de 1947, cuando el Juzgado le dió cinco días de plazo para depositar los alquileres vencidos, el recurrido no tenía más que ₱2,088.78 en el Banco Nacional y en la China Banking Corporation. Hacia el 21 de julio del mismo año en que el Juzgado le dió otro plazo de cinco días para hacer el depósito, el recurrido no tenía más que ₱992.78 en los citados bancos. Y hacia el 19 de agosto de 1947, cuando Fred R. Redfern requirió al recurrido urgentemente para que hiciera el depósito, dicho recurrido no tenía más que ₱19.85 en dichos bancos. Y cuando por tercera vez hacia el 28 de agosto de 1947, el Juzgado le dió otros cinco días para hacer el depósito, el recurrido no tenía más que ₱702.59 en los referidos bancos. Y entre 6 a 11 de septiembre de 1947 cuando el Juzgado le dió una prórroga final de cinco días para hacer el depósito, el recurrido no tenía más que ₱1,107.59 en los bancos.

Es difícil compaginar con los hechos probados la buena fe del recurrido al no cumplir las varias órdenes del Juzgado de Primera Instancia de Rizal a depositar en la escribanía las cantidades que tenía en su poder. No hay duda de que a los recurrentes se les ha hecho sufrir innecesariamente al ponerles en la difícil situación de tener que pedir prestado dinero con que pagar los alquileres de los

meses de febrero hasta agosto de 1947, so pena de ser lanzados de la finca por el shériff; gastar ₱100 por obtener fianza para levantar el embargo preventivo trabado contra sus bienes y allanarse a regañadientes a entrar en una transacción en 15 de septiembre. El recurrido, violando un fideicomiso profesional, no empleó el dinero confiado a él en beneficio de sus clientes, como éstos esperaban, sino de otro modo. Es culpable de práctica antiprofesional.

Se decreta la suspensión del recurrido en el ejercicio de la profesión de abogado por dos años a contar del 26 de febrero de 1948 en que fué suspendido por el Juzgado de Primera Instancia de Rizal.

Moran, Pres., Parás, Feria, Perfecto, Bengzon y Tuason, MM., están conformes.

Se decreta la suspensión por dos años.

[No. L-2305. July 8, 1949]

ESTEBAN M. CORPUZ, protestant and appellant, *vs.* ISIDORO B. IBAY, protestee and appellee

1. ELECTIONS; ELECTION PROTEST; MUNICIPAL MAYOR; APPRECIATION OF BALLOT; MARKED BALLOT.—When patently irrelevant or impertinent words appear to have been written on the ballot for no other purpose than to identify the votes, such ballot should be rejected.
2. ID.; ID.; ID.; APPRECIATION OF VOTER'S INTENTION.—Although in contested ballots the voters exhibited lack of skill in calligraphy their intention to vote for the protestee was sufficiently manifest to justify the trial court's appreciation of said votes in protestee's favor.
3. ID.; ID.; ID.; COURTS; JURISDICTION TO TRY AND PASS UPON ALL QUESTIONS INVOLVED IN THE CONTEST.—Once an election contest is properly filed, the court has jurisdiction to try and pass upon all questions involved in the contest; under the new election law it has jurisdiction to proclaim the winning candidate without the need of another canvass by the board of canvassers, it being guided only by the outcome of its findings.
4. ID.; ID.; ID.; STATUTORY CONSTRUCTION; PARAGRAPH 1 OF SECTION 149 OF THE REVISED ELECTION CODE, INTERPRETED.—The last clause of paragraph 1 of section 149 of the Revised Election Code, which reads "but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter," refers to one word which is at the same time the Christian name of the candidate and the surname of his opponent, in which case the vote shall be counted in favor of the candidate whose surname corresponds to the word in question.

APPEAL from a judgment of the Court of First Instance of Pangasinan. De Guzman, J.

The facts are stated in the opinion of the court.

Primicias, Abad, Mencias & Castillo for appellant.

N. T. Rupisan for appellee.

OZAETA, J.:

In the general elections held on November 11, 1947, five candidates were voted for the office of municipal mayor of Villasis, Pangasinan. Mr. Isidro B. Ibay was proclaimed by the municipal board of canvassers mayor-elect with 1,332 votes. His closest rival, Mr. Esteban M. Corpuz, who according to the said board of canvassers obtained 1,328 votes, filed a motion of protest in due time. The other three candidates did not participate in the protest.

After a revision of the ballots cast in the precincts mentioned in the protest and counterprotest, His Honor Judge Eulogio F. de Guzman found that the protestant Esteban M. Corpuz obtained 1,331 votes and the protestee Isidoro B. Ibay, 1,333 votes, and proclaimed the latter duly elected with a plurality of 2 votes. The protestant appealed.

In his assignments of error the protestant-appellant questions the correctness of the trial court's appreciation of 16 ballots in favor of the protestee-appellee, while the latter in his counterassignments of error in turn impugns the trial court's appreciation of 8 ballots in favor of the protestant-appellant.

After a joint examination by the members of the Court of each of the contested ballots in relation to the assignment of error, the Court unanimously rejected ballots I-26 and I-33 as marked ballots, the first with "(2 potoc" written after the name of the second councilor voted for, and the second with the word "comconpiling" written at the foot of the ballot below the name of the eighth councilor voted for. These words are patently irrelevant or impertinent and appear to have been written for no other purpose than to identify the votes, and should have been rejected by the trial court. (*Lucero vs. De Guzman*, 45 Phil., 852, 854.)

The Court is unanimous in affirming the appreciation by the trial court of the following 12 ballots in favor of the protestee:

I-6—The name written for mayor, as the Court reads it, is "Mayor—Isidoi iBoy"; I-8—"Tuduro Ybai"; I-9—"Teodoro Ibay"; I-29—"teodoro Ebai"; I-55—"Tiodoro Ebay"; I-66—"Teodoro Ibay"; I-31—"Isidao B Ibay"; I-32—"Isidoro ipai"; I-35—"Sidoro Biay"; I-36—"isidara bay"; I-42—"Esedoro Eyava"; and I-67—"I. sidoro."

The Court believes that although in these contested ballots the voters exhibited lack of skill in calligraphy their intention to vote for the protestee Isidoro B. Ibay was sufficiently manifest to justify the trial court's appreciation of said votes in his favor. The Christian name Teodoro, Tudoro, or Tiodoro, followed by the surname Ibay, is sufficiently close or similar to the name Isidoro Ibay to justify the reading of the votes in favor of the appellee, there being no candidate named Teodoro.

The appellant also contends that I-49 is a marked ballot, and should have been rejected by the trial court, because the words "N Rapisa" appear on the first line provided for a member of the provincial board. It is alleged that N. Rapisa corresponds to the name of former Assemblyman Nicomedes T. Rupisan, who was twice elected Member of the National Assembly representing the fourth district of Pangasinan, of which the town of Villasis forms part. Appellant cites as authority the case of *Raymundo vs. De Ungria*, G. R. No. 43044, July 18, 1935, in which it was held:

"It is now a uniform rule in this jurisdiction that ballots with the names of conspicuous politicians or personages voted for offices for which they are not candidates and are not eligible for being nonresidents should invariably be considered as marked and void."

In the first place, it is not clear that the name N. Rapisa corresponds to that of a conspicuous personage. In the second place, even assuming that that name was intended for former Assemblyman Nicomedes T. Rupisan, yet the latter was a resident of Pangasinan and could have been voted member of the provincial board of that province. Hence the case cited does not apply.

In his last assignment of error the appellant questions the validity of one vote cast in Clark Field, Pampanga, in favor of the appellee, telegraphic advice of which was received by the municipal treasurer of Villasis from Clark Field, Pampanga, on November 15, 1947, one day after the municipal board of canvassers had met and proclaimed the elected candidates. Said vote appears to have been cast under the provisions of section 17 of the Revised Election Code, which reads as follows:

"SEC. 17. *Voting in Bases and Reservations.*—On the day of voting, said voters shall vote in the place or places designated at the base or reservation by the Commission on Elections and before the representative or representatives of said Commission, for which purpose said representative or representatives shall be in the said place or places at seven o'clock in the morning of that day to receive the votes of the voters, and, at six o'clock in the afternoon or as soon as the the voters have finished voting, shall make a canvass and prepare a statement of the result thereof, transmitting such result by telegraph immediately after the canvass, to the municipal treasurer concerned and to the Commission on Elections, so that it may be included in the final computation of the votes and at the same time the said representative or representatives shall send to said officers certified copies of the statement by rush and registered mail."

Appellant contends that the consideration of said vote devolved upon the municipal board of canvassers, "who had the ministerial duty to do it," and that the lower court had no jurisdiction to take cognizance of said vote. In other words, according to counsel for appellant, the protestee should have first instituted an action of mandamus against the municipal board of canvassers for the

purpose of compelling the latter to include said vote in its canvass. There is no question that said vote was properly cast in accordance with law, as shown by the certificate Exhibit Y. The delay in giving immediate advice of said vote as required by section 17 was neither the fault of the voter nor the fault of the candidate voted for. The trial court held that once an election contest was properly filed, the court had jurisdiction to try and pass upon all questions involved in said contest; that under the new election law it had jurisdiction to proclaim the winning candidate without the need of another canvass by the board of canvassers, it being guided only by the outcome of its findings. We sustain this ruling of the trial court as being in accordance with law.

It results from the foregoing consideration of appellant's assignments of error that only 2 of the 16 votes for the appellee which the said appellant impugns by his appeal should be rejected and deducted from appellee's total number of votes, thereby reducing it from 1,333 to 1,331. That would give him the same number of votes as that for the appellant, unless appellee's counterassignments of error, or at least one of them, should prosper. We shall now direct our attention to these counterassignments of error.

The Court is unanimous in the opinion that the first, second, third, and fifth counterassignments of error, referring to ballots E-1, E-17, E-31, E-2, E-13, and E-34, are devoid of merit.

The Court is likewise unanimously of the opinion that the fourth counterassignment of error is meritorious. This refers to ballots E-18 and E-19, both of which were cast for "Isidoro Corpuz" and claimed by both appellant Esteban M. Corpuz and appellee Isidoro B. Ibay but awarded to the former by the trial court under paragraph 1 of section 149 of the Revised Election Code. The statutory rule invoked by the trial court reads as follows:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter."

Note that the last clause of the above-quoted rule refers to one word which is at the same time the Christian name of the candidate and the surname of his opponent, in which case the vote shall be counted in favor of the candidate whose surname corresponds to the word in question. For instance, let us suppose that the names of the candidates for the same office are Luis Francisco and Francisco Hernandez. Should the voter write only the word "Francisco" the rule in question says that it should be counted in favor of Luis Francisco and not in that of Francisco

Hernandez. That rule has no application to the case at hand, wherein the voter used two words, one corresponding to the Christian name of one candidate and the other to the surname of his opponent. In such a case the vote is invalid for either candidate because there is no way of determining the real intention of the voter.

It results, therefore, that these two votes E-18 and E-19 counted by the trial court in favor of the protestant-appellant should be deducted from the latter's total number of votes, thereby reducing it from 1,331 to 1,329, against appellee's total of 1,331 as hereinabove reduced.

The result is that the protestee-appellee's proclamation by the trial court as the duly elected municipal mayor of Villasis, Pangasinan, with a plurality of 2 votes must be, as it is hereby, affirmed, with costs against the appellant.

Moran, C. J., Parás, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment affirmed.

[No. L-2301. July 11, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
RICARDO ERIT ET AL., defendants. RICARDO ERIT,
LEOPOLDO ERIT and PEREGRINO FRANCO, defendants
and appellants.

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; EVIDENCE; IDENTITY OF ACCUSED; FACTORS THAT AFFECT ACCURACY OF WITNESSES' TESTIMONY.—The time and the position of the parties lend ground for skepticism as to the accuracy of the witnesses' observation with respect to the identity of the accused.
2. ID.; ID.; ID.; MOON; LAWS AND PHENOMENA OF NATURE AS WITHIN JUDICIAL NOTICE.—The court may take judicial notice of the fact that the moon was in its last quarter on September 18, 1946, and rose on the 16th at 10.20 p. m.
3. ID.; ID.; ID.; QUARTER MOON, LIGHT OF.—A quarter moon cannot satisfactorily afford the people inside the house sufficient light to recognize the people in the yard with a reasonable degree of certainty.
4. ID.; ID.; ID.; MEANS BY WHICH A PERSON MAY BE RECOGNIZED BY ANOTHER.—A person may be recognized through his size, his height, movements, and the shape of his body by another to whom those features are familiar.
5. ID.; ID.; ID.; DEFENDANT'S TESTIMONY WHEN MAY BE GIVEN FULL WEIGHT AND CREDENCE.—When the defendant's answers to the questions propounded to him are to the point, straight forward, plausible and consistent, his testimony has the earmarks of sincerity, and may be given full weight and credence.

APPEAL from a judgment of the Court of First Instance of Masbate. De Venecia, J.

The facts are stated in the opinion of the court.

Jose M. Angustia for appellants.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Luis R. Feria* for appellee.

TUASON, J.:

A band of five men raided and robbed the house of Eulalio Bedrijo in barrio Matagangtang, municipality of Cataingan, Masbate, on the night of September 16, 1946, killing Bedrijo and carrying away ₱400 in cash and various articles of personal property worth, according to the information, ₱200. Four witnesses pointed to Peregrino Franco, Ricardo Erit and Leopoldo Erit, the last two being brothers, as three of the perpetrators of the crime. The witnesses were Edilberto Bedrijo, Eulalio's son, Pablo Morales, Mauricia Catampungan, widow of the deceased, and Pacifico Muerteguí. Their testimony is summed up in the brief for the Government as follows:

"It appears that at about 2 o'clock in the early morning of September 16, 1946, (pp. 3, 28, 34, t. s. n.) the herein appellants, Ricardo Erit, Leopoldo Erit and Peregrino Franco, accompanied by two other unidentified persons, all armed with rifles (pp. 5, 20, 43, t. s. n.), went to the house of Eulalio Bedrijo, who was the barrio lieutenant of Matagangtang (pp. 5, 40, t. s. n.) which was located in said barrio, municipality of Cataingan, Province of Masbate (pp. 2, 40, t. s. n.). Upon arriving thereat, they called from below, saying 'Good evening' (p. 13, t. s. n.), but as none of the occupants of the house answered, they fired at the house (pp. 10, 18, 31, t. s. n.). Immediately thereafter, Peregrino Franco and the two unknown persons went up the house (pp. 3, 18, 20, 31, 42, t. s. n.), while the appellants Ricardo and Leopoldo Erit remained below, standing guard around the house (pp. 3, 14, 28, t. s. n.). The occupants thereof, namely, Mauricia Catampungan, wife of the deceased, Edilberto Bedrijo, son of the deceased, Pablo Morales, and three students, Pacifico Muerteguí, Leandro Aguilar and Pablo Nator (pp. 33, 40, t. s. n.), were all herded in a room therein (pp. 14, 38, 50-51, t. s. n.). The three robbers started looking for the revolver of the deceased and threatened to shoot the occupants if they did not deliver the said revolver (pp. 11, 19, 32, 40, t. s. n.) to which Edilberto Bedrijo answered that he had no revolver (pp. 19, 32, t. s. n.), and the widow saying that her husband had taken his revolver with him to town (pp. 11, 19, 32, 40, t. s. n.). The marauders then demanded money from them and upon being told by Mauricia Catampungan that she had no money, threatened to force open her trunk (pp. 11, 19, 32, 41, t. s. n.). Upon being thus threatened, Mauricia opened the trunk from which Peregrino Franco took an 'alcancia' which he broke open and which contained silver coins amounting to ₱400 (pp. 11-12, 19, 32, 41, t. s. n.). The robbers also took away with them a raincoat and eyeglasses belonging to the deceased (p. 33, t. s. n.), as well as several articles of clothing belonging to the students (pp. 40, 42, t. s. n.), with a value of ₱66 (Exhibit 1). Moments thereafter, the deceased arrived, and as he was entering the gate, appellant Ricardo Erit told him not to move (p. 33, t. s. n.), and when the former proceeded to enter, Erit fired at him (pp. 12, 33, 41, t. s. n.). After taking the revolver, valued at ₱100, from the cadaver, (pp. 5, 33, t. s. n.), appellants and their unknown companions hurriedly left the premises (pp. 39, 44, t. s. n.).

"As a result of the gunshot wounds he sustained on the left breast and left forehead (pp. 53-54, t. s. n.), the deceased expired on that occasion (p. 4, t. s. n.) and was buried two days thereafter (Exhibit A)."

Upon this evidence, His Honor, Judge Jose Z. de Venecia found the three above-named defendants (the others not

having brought to trial) guilty of robbery and sentenced them to not less than 4 months and 1 day of *arresto mayor* and not more than 3 years, 8 months and 1 day of *prisión correccional*, and to pay the heirs of the deceased ₱500. Ricardo Erit alone was pronounced guilty of homicide and, in addition to the above penalty, was sentenced for this offense to an indeterminate penalty of from 10 years and 1 day of *prisión mayor* to 14 years, 8 months and 1 day of *reclusión temporal*, and to indemnify the heirs of the deceased in the sum of ₱2,000.

Peregrino Franco admitted participation in the crime but said that he was forced by threats and intimidation by Santiago Onrubia, Zoilo de la Peña, Demetrio Mato and Antonio Sanchez. Ricardo Erit and Leopoldo Erit put up an alibi.

Peregrino Franco appealed to the Court of Appeals as well as Ricardo Erit and Leopoldo Erit but withdrew his appeal before the case was submitted for decision. The First Division of the Court of Appeals certified the case to this Court, being of the opinion that the crime committed was the complex crime of robbery with homicide, with aggravating circumstances, and that the impossible penalty was the maximum of that prescribed in article 294, subsection 1, of the Revised Penal Code, which is death.

Ricardo Erit's and Leopoldo Erit's appeal presents a question of identity.

Although, as the court below observed, the witnesses directly and positively affirmed that Ricardo Erit and Leopoldo Erit were the two men who stood guard downstairs and that Ricardo Erit shot Eulalio Bedrijo, their testimony is far from being airtight and is totally uncorroborated. Aside from the witnesses' affirmation, there is no evidence, direct or circumstantial, which links the two brothers with the crime in question. The truth of the testimony that the witnesses saw Ricardo and Leopoldo Erit through the window hinges not so much on the witnesses' veracity as on their ability to recognize the defendants beyond any possibility of mistake. That they told what they conscientiously believed to be true might be conceded; that their perception was correct is seriously to be doubted.

The time and the position of the parties lend ground for skepticism as to the accuracy of the witnesses' observation. The witnesses were all inside the house while the robbers, who they said were the Erit brothers, were in the yard. The house was quite high, high enough at least to permit a man to stand up under the floor. The light in the house was not described, nor was the part of the house where it was placed revealed. The probabilities were that it was an ordinary kerosene lamp, the light of which could not have transcended far beyond the window.

It is said that there was a moon, but it was not full moon, as some witnesses erroneously asserted. We may take judicial notice of the fact that the moon was in its last quarter on September 18, 1946, and rose on the 16th at 10.20 p. m. Granting that the night was not overcast, still we are not satisfied that a quarter moon afforded the people inside the house sufficient light to recognize the people in the yard with a reasonable degree of certainty. A person may be recognized through his size, his height, movements, and the shape of his body by another to whom those features are familiar. Edilberto Bedrijo was not so situated with reference to Ricardo or Leopoldo Erit. These lived eight kilometers from Bedrijo's house and were known to Edilberto only because this witness used to see them in the market. Our doubts find concrete support in the fact that Edilberto Bedrijo, of all the four witnesses, was the only one who said from the start that the two men who kept watch downstairs and one of whom shot his father were the Erit brothers. Two of the other witnesses named only Peregrino Franco in their extrajudicial statements. The other witness was not examined or presented at the preliminary investigation although he said he was on hand ready to testify.

Circumstances of affirmative character disclosed by the evidence add to the uncertainty:

1. Peregrino Franco, who was arrested before the Erit brothers and who from the outset admitted complicity in the robbery, did not implicate Ricardo or Leopoldo Erit, either directly or indirectly, while naming four others as his confederates. There is no indication, and there is no reason to believe, that Franco committed perjury to shield these brothers out of fear of them. He had more reason to be afraid of the people he squealed on. Ricardo Erit and Leopoldo Erit, as well as Franco, were securely lodged in jail. And, a stranger from Iloilo, Franco was not bound with the Erits by ties of blood or friendship. Except for the fact that he claimed to have been forced against his will, a claim which we think is untrue but which was not strange for him to make, this defendant's testimony has the earmarks of sincerity. His answers were to the point, straightforward, plausible and consistent.

2. The people whom Peregrino Franco pointed out as his companions were not imaginary persons but real, hardened bandits who were the terrors in Cataingan. Three of them were slain by the police in November, 1946, and so were still alive when they were incriminated by Franco. This clashes with the prosecution's theory that Franco falsely implicated them because they could not refute his statements.

3. On the body of one of the three men killed, Santiago Onrubia, was found witness Muertegui's belt, which was among the personal effects stolen from Bedrijo's house.

This is a safe demonstration that Onrubia was one of the robbers. It is to be presumed from the nature of their business that Onrubia, De la Peña, Mato and Sanchez operated in group and were together when the crime at bar was committed. The information in fact named all of them as active participants in the crime. Now then, with Peregrino Franco there were already five malefactors accounted for. According to the witnesses for the Government, only five men composed the band, three going up the house and two remaining outside.

4. Ricardo Erit and Leopoldo Erit have not been shown to have any police record or reputation for lawlessness. As a matter of fact, one of them at least, Ricardo, appears to have gainful occupations. He was a carpenter and farmer.

Our conclusion is that Ricardo Erit and Leopoldo Erit should be acquitted. The appealed decision is reversed with costs charge *de officio*.

Moran, C. J., Ozacta, Parás, Feria, Perfecto, Bengzon, Briones, and Reyes, JJ., concur.

Judgment reversed; defendants acquitted.

[No. L-1630. July 23, 1949]

ANTONIO NARVAEZ, petitioner, *vs.* DIONISIO DE LEON, Judge of First Instance of Manila, LADISLAO PASICOLAN, Sheriff of Manila, and CENTRAL SURETY INSURANCE COMPANY, as plaintiff in Civil Case No. 2255 in the Court of First Instance of Manila, respondents.

1. OBLIGATIONS AND CONTRACTS; SOLIDARY OBLIGATION; SOLIDARY DEBTOR'S RIGHT TO INTERPOSE DEFENSES AGAINST THE CLAIM OF CREDITOR.—The creditor may sue either any of the solidary debtors or all of them simultaneously, but whether only one or all of the solidary debtors are sued jointly "any solidary debtor may interpose against the claim of the creditor all defenses arising from the nature of the obligation," as well as those "personal to the other solidary debtors * * * with respect to the share of the debt for which the former may be liable."
2. *Id.*; *Id.*; EXTENT OF RIGHT AND LIABILITY OF SOLIDARY DEBTOR.—Although a solidary debtor is bound to perform not only his share in the solidary obligation but also that of his solidary co-debtor since a solidary is also a joint obligation, if any one of the other solidary debtors had already paid or transferred his property to the creditor to secure the payment of his share, the defendant solidary debtor has the right to have that payment or the property given as security by the other debtors sold and the proceeds applied to the satisfaction of the latter's shares in the obligation for which the defendant may be liable, pursuant to article 1148 of the Civil Code.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Adolfo Garcia for petitioner.

Alberto M. Meer for respondents.

FERIA, J.:

Ramon P. Bernal was indebted to the Central Surety Co. in the sum of ₱3,000 and together with the petitioner Antonio Narvaez signed, as co-makers, a promissory note for said amount in favor of the creditor. Besides, the debtor Bernal executed a chattel mortgage on certain personal properties belonging to him that had an inventory value of about ₱7,000 to secure the payment of his said debt. On April 8, 1947, the respondent Central Surety Insurance Co. instituted an action against R. Bernal and the petitioner for the recovery of the aforementioned sum of ₱3,000, and obtained a writ of attachment on the same properties mortgaged to the plaintiff to secure the payment of said amount, according to the verified allegation in the petition filed in the present case and not denied under oath by the respondents.

Sometime before the rendition of the judgment, the plaintiff and the defendant Bernal, without the knowledge of the petitioner Narvaez, entered into an extrajudicial agreement whereby Bernal assigned and transferred to the plaintiff Central Surety and Insurance Co. the same personal properties that were mortgaged to the plaintiff and subsequently attached upon the latter's petition to secure the payment of the debt, authorizing the plaintiff "to keep and preserve it or sell it with my consent, the proceeds of which shall be applied to whatever judgment may be rendered against me in the civil case of which I am the defendant" (Annex A, respondent's answer.)

After the rendition of the judgment in favor of the plaintiff and against the defendants had become final and before any action had been taken by the plaintiff on the personal properties of Bernal that were first attached and afterwards delivered to the plaintiff for the purpose above mentioned, a writ of execution was, upon plaintiff's motion, issued against the properties of petitioner Narvaez. The petitioner filed a motion to set it aside on the ground that, by the plaintiff's acceptance of Bernal's chattels or personal properties, delivered by the latter to the plaintiff to be sold and the proceeds of the sale applied to the payment of the judgment, the petitioner was only liable for the balance of the judgment that would remain unsatisfied. The petitioner's motion was denied, and hence this petition for certiorari.

Petitioner's contention in the present case is that the judgment creditor having already secured possession of the property of the other solidary debtor Bernal by attachment and voluntary surrender, to be kept and sold by the said judgment creditor to satisfy the judgment, the respondent judge abused his discretion in ordering the execution of the petitioner's property, citing article 1148 of the Civil Code in support of his contention. And the respondents, on the other hand, maintain that they have

the right to proceed against the petitioner without previously disposing of the properties of Ramon P. Bernal, because the petitioner is a joint and solidary debtor according to the final decision of the respondent judge, in accordance with article 1144 of the Civil Code, which provides that the creditor may proceed against any of the solidary debtor or against all of them simultaneously.

It is true that said article 1144 provides that the creditor may sue either any of the solidary debtors or all of them simultaneously, but whether only one or all of the solidary debtors are sued jointly "any solidary debtor may interpose against the claim of the creditor all defenses arising from the nature of the obligation," as well as those "personal to the other solidary debtors * * * with respect to the share of the debt for which the former may be liable." As the surrender of the personal properties of the defendant Bernal to the plaintiff in order that the latter may preserve and sell them and apply the proceeds thereof to the satisfaction of the judgment, was made after trial and a short time before the rendition of the judgment, the petitioner could not have set it up as a defense in his pleading or before the trial of the case, but he may plead it against the execution of the whole judgment against him. Because, although a solidary debtor is bound to perform not only his share in the solidary obligation but also that of his solidary co-debtor since a solidary is also a joint obligation, if any one of the other solidary debtors had already paid or transferred his property to the creditor to secure the payment of his share, the defendant solidary debtor has the right to have that payment or the property given as security by the other debtors sold and the proceeds applied to the satisfaction of the latter's shares in the obligation for which the defendant may be liable, pursuant to the above quoted article 1148 of the Civil Code.

In the present case, before the levy of the execution on the petitioner's property, the petitioner can not tell whether or not he is to be made to pay the whole amount of the judgment, without previously selling the property of the defendant Bernal in the hands of the plaintiff and applying the proceeds thereof to the payment of Bernal's share (one-half) in the solidary obligation, or only petitioner's share plus Bernal's unsatisfied share. Therefore, it is premature to contend that the court has acted contrary to the provision of article 1144 of the Civil Code in ordering merely the execution of the judgment on the petitioner's property, since the latter, as solidary co-debtor, is liable to pay at least his own share in the solidary obligation, as well as that of his co-debtor's Bernal which would remain unpaid.

If the respondent judge or court would not allow the petitioner to set up in due time such defense he shall

commit an error, but not exceed the court's jurisdiction and much less abuse a discretion which the court does not have, in view of the express provision of the law on the matter, and therefore certiorari would not lie.

Should the court insist, after the execution of the petitioner's property, on applying the proceeds of the sale thereof to the payment of the whole judgment without ordering the sale and applying the proceeds of the sale of Bernal's property in the hands of the judgment creditor to the satisfaction of the latter's share, the petitioner may appeal from the court's order denying his petition to that effect, because it would be a final order that affects a substantial right of the petitioner rendered after the judgment has become final. In the same way as appeal is allowed from an order allowing or disallowing costs, affirming or disapproving a sale in a foreclosure proceeding, or an order of the court on a report submitted by a commissioner appointed to determine a question of fact in order to carry a judgment or order into effect.

"In many States the statutes allow an appeal for a final order, or from an order or final order affecting a substantial right made after judgment, order or decree, or made on a summary application in an action after judgment" (3 C. J., sec. 269). "Under express statutory provisions in many jurisdiction, varying somewhat in language, an appeal will lie from 'any special order made after final judgment,' or from 'an order' or a 'final order,' or an order or final order 'affecting a substantial right,' 'in an action after judgment,' etc." (3 C. J., sec. 352). And section 2, Rule 4 of Rules of Court provides that appeal lies against a *final* judgment or order.

In view of all the foregoing, the petition for certiorari is denied with costs against the petitioner. So ordered.

Moran, C. J., Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PARÁS, J., concurring:

The petitioner, Antonio Narvaez, and Ramon P. Bernal were solidary co-makers of a note for ₱3,000 in favor of the respondent Central Surety Insurance Company. As a security for said note, Ramon P. Bernal executed a chattel mortgage in favor of the company on certain personal properties belonging to Ramon P. Bernal, valued, according to the inventory attached to the mortgage, at about ₱7,000. For failure to pay the obligation on time, the company instituted on April 8, 1947, a personal action in the Court of First Instance of Manila (Civil Case No. 2255) against Ramon P. Bernal and the petitioner, Antonio Narvaez, for the recovery of the sum of ₱3,000. Upon the commencement of said action, the company obtained from the court a writ of attachment against Ramon P. Bernal with a view to levying upon the same personal

properties already covered by the chattel mortgage. From the pleadings it does not definitely appear that said properties were actually levied upon in pursuance of said attachment. Indeed, on May 6, 1947, Ramon P. Bernal assigned to the Company the properties, for the company "to keep, and preserve it or sell it with my consent, the proceeds of which shall be applied to whatever judgment may be rendered against me in the Civil Case of which I am the defendant, and the Central Surety & Insurance Company is the plaintiff." (Annex A of answer.) Judgment in civil case No. 2255 in favor of the company was rendered by the Court of First Instance of Manila on May 31, 1947. After this judgment had become final and executory, the company obtained a writ of execution directed against the petitioner Antonio Narvaez. Efforts to quash this writ of execution against the petitioner having failed, the latter has come to this Court for the purpose of preventing its enforcement against the petitioner.

It is contended for the petitioner that the lifting of the attachment obtained by the company against the properties of Ramon P. Bernal, without notice to the Court of First Instance of Manila, was illegal, and that before the petitioner could be bound to pay anything to the company, there must be a showing that the Company has sold the properties mortgaged by Bernal and later sought to be attached by the Company, and that the proceeds of the sale were not sufficient to pay off the obligation of P3,000.

There is no merit in the contention. It is true that the properties in question were covered by a mortgage in favor of the company, and that the latter really intended to attach the same upon the commencement of civil case No. 2255. But there is no indication in the record that the company ever proceeded to foreclose the chattel mortgage or that actual levy was made on said properties. On the contrary, it appears that the properties were turned over by Ramon P. Bernal to the company for the latter to preserve it or sell it with the consent of Bernal. Under these conditions, the Company was not bound to sell said properties; as a matter of fact, it is not pretended that they were sold by the Company. The latter has every right to waive any advantage accruing under the mortgage, the attachment, and the voluntary surrender of said properties by Ramon P. Bernal. It appearing that the petitioner is a solidary debtor, it is elementary that the company may proceed against him independently of his co-maker Ramon P. Bernal. As long as the solidary obligation, now the subject matter of a final and executory judgment, is not paid, the company may go against the petitioner alone. The latter of course has his legal remedies against the co-maker Ramon P. Bernal.

The petitioner has called attention to a letter of Bernal dated August 5, 1947, informing the petitioner that the

company had taken all the personal chattels valued at more than ₱7,000 which Bernal mortgaged to the company, by reason of which Bernal considered the loan of ₱3,000 fully settled. If there was such a letter, the same cannot overcome the force and effect of Annex A of the answer of respondent company, which specifically authorized the company merely to keep and preserve said properties or sell them with the consent of Ramon P. Bernal.

Wherefore, I vote for the dismissal of this petition for certiorari, with costs against the petitioner.

PERFECTO, J.:

We concur in the above concurring opinion.

Petition denied.

[No. L-1729. July 23, 1949]

EVERETT STEAMSHIP CORPORATION, plaintiff and appellee,
vs. BANK OF THE PHILIPPINE ISLANDS, defendant and
appellant.

OBLIGATIONS AND CONTRACTS; PAYMENT; VALIDITY OF TRANSFER OR PAYMENT OF BANKS' DEPOSIT MADE BY ORDER OF JAPANESE MILITARY ADMINISTRATION.—The transfer or payment by the defendant bank of plaintiff's deposit, to the bank of Taiwan, as Enemy Property Custodian, by order of the Japanese Military Administration, was valid and released the defendant's obligation to the plaintiff.

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Leoncio M. Aranda for defendant-appellant.

Roxas, Picazo & Mejia for plaintiff-appellee.

FERIA, J.:

This case was submitted to the Court of First Instance of Manila on an agreed statements of facts the pertinent parts of which read as follows:

"That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at 223 Dasmariñas, City of Manila, Philippines; and that the majority of stockholders of the plaintiff corporation are American and British citizens;

"That defendant is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at Plaza Cervantes, City of Manila, Philippines;

"That sometime before December, 1941, the plaintiff opened and, since then maintained a deposit in current account with the defendant, which account, at the close of banking hours on December 29, 1941, had a valid balance of ₱53,175.51, Philippine currency;

"That during the period of Japanese occupation of Manila, the officers of the plaintiff corporation were interned by the Japanese Army in the University of Santo Tomas Internment Camp, Manila;

"That between December 29, 1941, and February 3, 1945, the plaintiff corporation has not availed nor attempted to avail itself of said deposit in current account with the defendant;

"That on October 4, 1943, the Director of the Department of General Affairs of the then Japanese Military Administration in the Philippines, promulgated ZAI No. 257, ordering the local banks to transfer to the Bank of Taiwan, Ltd., as the depository of the Bureau of Enemy Property Custody, all deposit account of hostile people (including those of corporation);

"That on or around October 8, 1943, the defendant bank in compliance with ZAI Order 257, turned over to the Bank of Taiwan, Ltd., Manila, the aforesaid balance of plaintiff's account with it, including the registry and identification cards, as well as all other papers related to said account, as non-combatant enemy property;

"That plaintiff's account with the defendant was transferred or paid by the defendant to the Bank of Taiwan on October 9, 1943 by defendant's Check No. 3474 drawn by defendant in favor of the Bank of Taiwan in the sum of P53,175.51;

"That on July 18, 1946, plaintiff presented to the defendant bank for honor its check No. 3976 for the sum of P53,175.51 and the defendant bank refused to honor plaintiff's check for the reason that on or about October 8, 1943, the defendant bank was ordered against its will, to turn over to the Bank of Taiwan, Ltd., Manila, as the depository of the Bureau of Enemy Property Custody, the aforesaid balance of plaintiff's account with it, including the registry and identification cards as well as other papers related to said account, in accordance with order ZAI No. 257 of the aforesaid Japanese Military Administration."

The lower court rendered a judgment sentencing the defendant to pay the plaintiff the sum of P53,175.51, which was the balance of the plaintiff's deposit in current account with the defendant bank at the close of banking hours on December 29, 1941, with legal interest up from July 6, 1946, until fully paid, and the costs.

The case of *Haw Pia vs. China Banking Corporation* No. 71164 of the Court of First Instance of Manila, decided by the said Court of First Instance on March 12, 1946, in favor of the defendant, was then pending on appeal in this Supreme Court, L-554 (45 Off. Gaz. [Supp. to No. 9], 229), and the attorneys for the plaintiff-appellee in their brief filed with this Court in the instant case submitted the following:

"Contrary to the assertions of defendant-appellant, this case is analogous to *Haw Pia vs. China Banking Corporation*, G. R. No. L-554, now pending before this Honorable Court. The slight difference in the factual situation between this case and the *Haw Pia* case is insignificant for, in the final analysis, the ultimate issue of facts and the general applicable principles in both cases are basically the same. If we understand correctly the argument in the *Haw Pia* case, it is there contended by the China Banking Corporation that the collection by the Bank of Taiwan, Ltd., as liquidator of the China Banking Corporation, of the mortgage credit which it had against *Haw Pia*, amounted to a confiscation of said credit by the Japanese Military authorities. It is further urged by the China Banking Corporation that the payment by *Haw Pia* to the Bank of Taiwan, Ltd., was null and void, and did not discharge *Haw Pia's* mortgage obligation.

"In the instant case, the issue involved is whether the Japanese Military Administration could validly require defendant-appellant to transfer to the Bank of Taiwan, Ltd., as official depository of the Bureau of Enemy Property Custody, the balance of plaintiff-appellee's current account with defendant-appellant. It is the contention of plaintiff-appellee that the transfer by defendant-appellant to the Bank of Taiwan, Ltd., of the balance of its pre-war account amounted to a confiscation of plaintiff-appellee's credit against defendant-appellant. It may, therefore, be seen that the only difference between the two cases is that in the Haw Pia case, the victim of the confiscatory act is a bank, while in the instant case, the victim is a depositor. We, therefore, take the view that both the Haw Pia case and the instant case should be governed by the same decisive principles of law." (Plaintiff's brief, pages 4 and 5.)

Attorneys for the appellee are correct in stating that the case at bar is analogous to that of *Haw Pia vs. China Banking Corporation*, and that the "slight difference in the factual situation between this case and the *Haw Pia* case is insignificant for, in the final analysis, the ultimate issue of facts and the general applicable principles in both cases are basically the same," and therefore, "the *Haw Pia* case and the instant case should be governed by the same decisive principles of law."

In the *Haw Pia* case the Japanese Military Administration ordered the liquidation of the local enemy banks, among them the China Banking Corporation, and authorized the Bank of Taiwan, which was the depository or custodian of the enemy property, to liquidate the business of said corporation and to collect and keep the debts due to the bank from its debtors, because a bank had to be liquidated before its asset or properties could be seized or impounded. In the present case, by order of the Japanese Military Administration, the plaintiff's deposit balance with the defendant Bank was transferred or paid by the defendant to the Bank of Taiwan designated by ZAI Order No. 257 of the Japanese Military Administration as depository of Enemy Property Custody of all deposit accounts of hostile people including those of corporations. The question involved in the *Haw Pia* case was whether or not the collection of *Haw Pia's* debt to the China Banking Corporation by the Bank of Taiwan, by order of the Japanese Military Administration, was a confiscation of the defendant bank's credit; and the question involved in the present case is whether or not the transfer or payment by the defendant bank to the Bank of Taiwan of the plaintiff's credit or deposit accounts, by order of the Japanese Military Administration, was a confiscation of said credit.

This Court having ruled in the *Haw Pia* case that the collection by the Bank of Taiwan of the China Banking Corporation's credit from the latter's debtor, by order of the Japanese Military Administration, was not a confisca-

tion but a mere sequestration of enemy's private personal property, and therefore the payment by the plaintiff to the Bank of Taiwan was valid and released his obligation to the defendant Bank, it follows that the transfer or payment by the defendant bank to the Bank of Taiwan of plaintiff's deposit, by order of the Japanese Military Administration, was valid and released the defendant's obligation to the plaintiff.

In view of the foregoing, the judgment appealed from is reversed and the defendant is absolved from the complaint.

Moran, C. J., Parás, Bengzon, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

We concur upon the same grounds in our opinion in the Haw Pia case.

TUASON, J., dissenting:

I dissent on the same general principles and reasons stated in Mr. Justice Hilado's dissenting opinion in *Haw Pia vs. China Banking Corporation*, G. R. No. L-554, and in my dissenting opinion in *Philippine Trust Company vs. Araneta*, G. R. No. L-2734.

Judgment reversed; defendant absolved from complaint.

[No. L-1525. July 27, 1949]

MODESTO SORIANO, petitioner, *vs.* CAROLINA ABALOS, MERCEDES ABALOS, ENCARNACION ABALOS, PABLO MANUEL, on his behalf and as guardian *ad-litem* of Romulo and Florencio, both surnamed Manuel, respondents.

1. PURCHASE AND SALE; CONVENTIONAL REDEMPTION; STIPULATED PERIOD "AT ANY TIME" WITHIN WHICH TO REPURCHASE.—In conventional redemption when the contracting parties stipulated that the vendors may repurchase the property "at any time they have the money," there is a time expressly made, which is "any time." It being, however, an unlimited or indefinite time, under the second paragraph of article 1508 of the Civil Code, it cannot exceed ten years.
2. OBLIGATIONS AND CONTRACTS; PAYMENT OF JUDGMENT DEBT DUE DURING JAPANESE OCCUPATION; JAPANESE WAR NOTES' VALUE EQUIVALENT TO PHILIPPINE CURRENCY UNDER BALLANTINE SCALE OF VALUES.—Petitioner is not liable to pay now in Philippine currency the same number of pesos in Japanese war notes to which he was sentenced on December 1944. He is liable only to pay the equivalent which may be determined by means of the Ballantine scale of values, as held in *Hilado vs. De la Costa*, G. R. No. L-150.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Primicias, Abad, Mencias & Castillo for petitioner.
Fernandez, Unson & Patajo for respondents.

MORAN, C. J.:

This is an appeal by certiorari from a decision of the Court of Appeals. The facts are as follows:

On March 17, 1938, respondents Juliana Abalos and Carolina Abalos sold the parcel of land described in the complaint to Felipe Maneclang and Modesto Soriano at the price of ₱750, with option to repurchase the same "at anytime they have the money." Offer to repurchase was made on December, 1941, which could not be carried out because of the war. Felipe Maneclang, in the meantime, ceded all his rights to petitioner Modesto Soriano, and in May, 1944, offer to repurchase was again made, but Modesto Soriano rejected the offer. Wherefore, vendors consigned the price of ₱750 with the court and filed a complaint for repurchase.

Juliana Abalos died and was substituted in this case by her heirs Romulo and Florencio, surnamed Manuel. It turned out that the property did not belong to the vendors Carolina and Juliana Abalos alone, but also to their sisters, the intervenors and respondents Mercedes and Encarnacion Abalos. The Court of First Instance of Pangasinan rendered judgment ordering Modesto Soriano to execute a deed of reconveyance in favor, not only of Carolina Abalos and the heirs of Juliana Abalos, but also of the intervenors Mercedes and Encarnacion Abalos; authorizing Modesto Soriano to collect and receive as price for the reconveyance the sum of ₱750 consigned with the court; and sentencing Modesto Soriano to pay the respondents the sum of ₱3,200 as the value of the fruits of the land in 1944 obtained by Modesto Soriano. This judgment was affirmed *in toto* by the Court of Appeals.

Petitioner Modesto Soriano now maintains in this Court that respondents no longer had any right to repurchase the property because, there being no express agreement as to the time within which the repurchase could be made, that time should be, under the first paragraph, article 1508 of the Civil Code, four years which in this case expired on March 17, 1942.

The stipulation, however, is that the vendors may repurchase the property "*at any time they have the money.*" There is, therefore, a time expressly stipulated, which is "any time." It being, however, an unlimited or indefinite time, under the second paragraph of article 1508 of the Civil Code, it cannot exceed ten years. This is the ruling laid down in the cases of heirs of Jumero *vs.* Lizares, 17 Phil., 112; Bandong *vs.* Austria, 31 Phil., 479; and Gonzaga *vs.* Go, No. 47061 (40 Off. Gaz. [7th Supp.], 71).

In the first case, heirs of Jumero *vs.* Lizares, 17 Phil., 112, Chief Justice Arellano said: "* * * even admit-

ting that it was stipulated that the right to repurchase or redeem should last for an *indefinite time*, such period is restricted to ten years, under paragraph 2 of article 1508 of the Civil Code, * * * (p. 120). In the case of *Bandong vs. Austria*, 31 Phil., 479, the vendors were given the right to repurchase "in the month of March of *any year* after the date of the contract." In other words, the vendors were given the right to repurchase again at anytime or any year. And this Court held that the repurchase could be made within a period of not more than ten years. And in the case of *Gonzaga vs. Go*, G. R. No. 47061, the vendors were given the right to repurchase "en cualquier tiempo devolviendo la cantidad de P250 y los gastos que ocasione el contrato." And this Court held that "en cualquier tiempo" meant not more than ten years.

We conclude, therefore, that in the instant case, the vendors had ten years within which to repurchase the property and that period did not expire until March 17, 1948. The offer to repurchase was made in May, 1944.

It is also maintained by petitioner that the damages awarded to respondents were based erroneously on a value equal with that of Japanese war notes as were due in December, 1944. We believe that this contention is well taken. Petitioner is not liable to pay now in Philippine currency the same number of pesos in Japanese war notes to which he was sentenced on December, 1944. He is liable only to pay the equivalent which may be determined by means of the Ballantine scale of values, as held in *Hilado vs. De la Costa*, G. R. No. L-150. According to that scale the value of Japanese military notes in relation to the peso in Philippine currency on December 1, 1944, was 90 to 1. Consequently, instead of the sum of P3,200, petitioner should be sentenced to pay yearly P35.55 as damages beginning May, 1944 until the property is finally delivered to respondents.

For all the foregoing, the judgment of the Court of Appeals is affirmed with the only modification that the petitioner is sentenced to pay respondents, counting from May, 1944 until the property is delivered to respondents, as damages the amount of P35.55 yearly, plus costs. If the price consigned in court was destroyed, petitioner must bear the loss.

Ozaeta, Parás, Feria, Bengzon, Tuason, and Montemayor, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

PERFECTO, J., concurring:

We concur in this decision, with the statement that the so-called Ballantine system has the force and effect of law. The veto of the President of the United States

to the corresponding act of our Congress has absolutely no effect, because the subject matter of the law in question is not among those which, under the Independence Act, are subject to the approval of the President of the United States of America.

Judgment affirmed.

[No. L-1752. July 27, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ERNESTO POBLETE Y MENDOZA ET AL., defendants.
ERNESTO POBLETE Y MENDOZA, appellant.

CRIMINAL LAW; EVIDENCE; IDENTITY OF THE ACCUSED; ABSENCE OF LIGHT.—The fact that all the lights in the house were out except perhaps one in the toilet room, adds to the doubt as to the identity of the man who, according to A. C., was the appellant.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Lorenzo Sumulong & Esteban P. Garcia for appellant.
Assistant Solicitor-General Ruperto Kapunan, Jr., and Solicitor Ramon L. Avanceña for appellee.

TUASON, J.:

This is an appeal from a decision of the Court of First Instance of Manila finding the appellant guilty of robbery with homicide and sentencing him to *reclusión perpetua*, to the accessories of law, to indemnify the heirs of the deceased, Concepcion Carpio, in the sum of ₱4,000, and to pay one-fifth of the costs.

Four other persons were accused of the same crime with the appellant. Three of them were acquitted for insufficiency of evidence and one was still at large when the case was tried.

It appears that five men broke into a house in Sampaloc, Manila, between twelve midnight and one o'clock a.m., on August 6, 1946. The robbers were armed with German luggers, carbines and pistols, gathered the people of the house in the sala, and searched the place for loot. Alfredo Carpio, one of the inmates, was able to slip out into the street and cry for help. Upon hearing Alfredo's outcries, the malefactors fled, but in their flight they fired into the dwelling and fatally wounded Concepcion Carpio, Alfredo's sister, who succumbed soon after, on the way to a hospital. They succeeded in carrying away cash, jewelry and other articles worth, including the cash, ₱4,000.

Appellant's three coaccused were acquitted because the only evidence against them was their confessions to the police, and these confessions, the court believed, had been obtained through force and intimidation.

In pronouncing Ernesto Poblete, the appellant, guilty, the court found that he had been identified by Alfredo Carpio, who declared that Poblete was armed with a revolver, and that, although the faces of the robbers were covered with handkerchiefs, Ernesto Poblete pulled down his once. But Detective Baldomero Tiansen, who was presented as a witness for the prosecution, testified that in his investigation of the robbery, Alfredo Carpio pointed to Eduardo Ignacio as the man who took off his disguise and who was recognized by Alfredo.

No attempt was made to explain this contradiction. Little or no value can be attached to Alfredo Carpio's testimony. The fact that all the lights in the house were out except perhaps one in the toilet room, adds to the doubt as to the identity of the man who, according to Alfredo Carpio, was the appellant.

However, we are satisfied that the appellant's confession was voluntary. The arresting and investigating officers denied that this accused was subjected to maltreatment. We are not prepared to declare that pressure was used to coerce him into confessing. If this defendant's co-accused were tortured, as the court found, it does not necessarily follow that the appellant was treated likewise. It appears that the appellant was arrested only on September 28, 1946, when Ricardo Mendoza, Jose Demetrio and Eduardo Ignacio, his co-defendants, were already under arrest and had made statements in which they implicated him. It would not have been strange if the appellant, confronted with these confessions, realized the futility of denying his participation in the crime and so readily admitted it.

The appealed decision is affirmed with costs, except that the appellant should be sentenced also to pay the owners the value of the property and cash stolen, which value is ₱4,000.

Moran, C. J., Ozaeta, Parás, Feria, Bengzon, Padilla, Montemayor, and Reyes, JJ., concur.

Judgment affirmed; indemnity added.

[No. L-1789. July 29, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ISMAEL AQUIVIDO, defendant and appellant

CRIMINAL LAW; TREASON; ACCUSED'S ACTIVITIES AS MAKAPILI CONSTITUTE THE CRIME OF TREASON.—Appellant was a Sakdal before the war. Early during the occupation he helped carry out the enemy's policy of disarming the civilians by confiscating the revolver of one J. L. He associated with the Makapilis in their headquarters and bore firearm at a time when that privilege was denied to those who were not working for the Japanese. He had identified himself with the Makapili organization and had his part in the segregation of guerrilla suspects from the large crowd that had gathered in the church

on the day of the massacre. He was there to help keep order or prevent those thus picked out from escaping, or putting up resistance. He was thus identified with the task which the Makapili organization was then performing, which was that of apprehending guerrilla suspects and turning them over to the Japanese. *Held*, That appellant was guilty of treason by having adhered to the enemy and given the latter aid and comfort.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Santiago F. Alidio for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Martiniano P. Vivo* for appellee.

REYES, J.:

The defendant Ismael Aquivido, a Filipino citizen, is accused of treason on three counts. Briefly, he is charged with having, in the month of February, 1945, adhered and given aid and comfort to the enemy by joining the Makapili organization in the City of San Pablo, Laguna, and cooperating with the Japanese Army in the apprehension of guerrilla suspects, commandeering of vehicles and supplies, burning of houses, and fleeing to the mountains and fighting the American and guerrilla forces, and, in particular, in the rounding up, on February 24, 1945, of over six hundred civilians in the said city and the identification and segregation out of that group of a number of guerrilla suspects, who were on that same day massacred by the Japanese soldiers.

There is no proof that defendant has taken part in the commandeering of vehicles and supplies and in the burning of properties or that he fled and fought with the Japanese forces.

But there is proof that before the war defendant was a Sakdal and that during the Japanese occupation he confiscated the gun of one Jose Lanuza. There is also proof of the existence of a Makapili branch in the City of San Pablo and, although it does not appear how defendant got into that organization, two witnesses testified that they knew him to be a Makapili. Moreover, he was garbed like the other Makapilis and bore a firearm. He was also seen at the Makapili headquarters consorting with members of that organization. Once he was seen with some companions in a calesa, escorting two bound men to headquarters.

The evidence further shows that, in the morning of February 24, 1945, the male residents of San Pablo City between the ages of 15 and 50 were made to assemble in the church on the pretext that laborers would be recruited. Once they were inside the edifice, the doors were closed and it was then announced that only some would be selected. To that end they were made to march

out through the door of the adjoining seminary before a line of Japanese soldiers and armed Makapilis. As they marched out, Agripino Calavia, a Makapili chief, picked out the wanted men by patting them on the back and those thus identified, or at least about seventy of them, were taken over by the Japanese soldiers and later massacred.

These facts were established by the testimony of several of those who were assembled in the church on that occasion and two of those who were led to the place of massacre and bayoneted but managed to survive by playing dead.

These same witnesses testified that on that occasion, as they marched out through the door of the seminary, they saw defendant standing beside or near Agripino Calavia, the man who was identifying the guerrilla suspects to be turned over to the Japanese soldiers. Defendant, like the other Makapilis, then had a firearm and wore khaki shirt, "maong" pants, leggings, and a Japanese cap with visor.

Defendant did neither testify nor present proof in his favor.

On the above evidence, a division of the People's Court found him guilty of treason and sentenced him to *reclusión perpetua*, with the accessory penalties prescribed by law, and to pay a fine of ₱10,000, and the costs. From this sentence, defendant has appealed, alleging that—

"The First Division of the People's Court erred in finding the appellant guilty of treason notwithstanding that no one of the witnesses testified to the overt acts alleged in the information, and presuming, contrary to the two-witness rule, that the appellant affiliated with the organization known as Makapili."

Not all of the counts in the information were proved, it is true. But we gather from the decision appealed from that the People's Court found it as a fact that defendant had identified himself with the Makapili organization and had his part in the segregation of guerrilla suspects from the large crowd that had gathered in the church on the day of the massacre. There is ample proof to support this finding.

The existence of a Makapili organization in the City of San Pablo with headquarters in the seminary is a fact sufficiently established by the evidence and, besides, this Court has already held that the existence and aims of the Makapili organization are matters of public notoriety that come within judicial notice. Thus, in the case of *People vs. Alitagtag*, 45 Off. Gaz., 715, this Court said:

"Judicial notice may be taken of the existence and purposes of the Makapili organization as matters of public notoriety and interest and as part of contemporary history. The courts knew as historical facts that the Makapili association was organized under the sponsorship, direction and supervision of the Japanese Army; that its aims were as stated in the preamble and purposes of its by-laws, Exhibit A-1; that it was a body of men recruited and armed

chiefly for the purpose of warfare and placed itself at the disposal of the enemy; that it received military training and instruction from Japanese military personnel and was equipped by the invaders for combat; that Filipinos joined that association and rendered service in furtherance of the above objectives, fighting side by side with the Japanese, commandeering supplies for the latter, and in many instances excelling their overlords in the commission of atrocities against their own countrymen in a campaign to suppress what they and the Japanese regarded as subversive acts."

There is no proof of appellant's formal induction into the Makapili organization. But, as already stated, two witnesses testified that they knew him to be a Makapili. Moreover, membership in that organization "need not be established by direct testimony" but "may be inferred from the surrounding circumstances." (People *vs.* Ali-tagtag, *supra.*) In the present case appellant's identification with the Makapilis may be inferred from a combination of circumstances which eloquently point to that fact. He was a Sakdal before the war. Early during the occupation he helped carry out the enemy's policy of disarming the civilians by confiscating the revolver of one Jose Lanuza. He was seen in a calesa conducting two bound men to the Makapili headquarters. He associated with the Makapilis in their headquarters. He bore firearm at a time when that privilege was denied to those who were not working for the Japanese. He was with the other Makapilis in church on February 24, 1945, standing beside or near their local chief, Calavia, while the latter was identifying those suspected of guerrilla activities, who were later massacred by the Japanese. He was then garbed like a Makapili.

There is no proof that he has taken part in rounding up the male residents of the City of San Pablo and concentrating them in church. He was not the one who identified the guerrilla suspects and he had no direct part in their execution. But despite the conflict of testimony on the kind of firearm he bore on that occasion, the evidence is quite clear that he was there with the other Makapilis and was armed like them. Indeed, he was, according to the witnesses, on the line of Makapilis posted at or near the door of the seminary through which those concentrated in the church were made to file out while the chief Makapili picked out those suspected of guerrilla activities. The obvious inference from this fact is that he was there to help keep order or prevent those thus picked out from escaping or putting up resistance. He was thus identified with the task which the Makapili organization was then performing, which was that of apprehending guerrilla suspects and turning them over to the Japanese. It would be idle to suggest that he just happened to be in that place by accident or as a mere spectator. He made no claim that he was merely an innocent by-stander, for he did not testify at all.

Our conclusion, therefore, is that appellant has been proved to be a Makapili and to have had a part in the carrying out of one of the main purposes of the Makapili organization when on February 24, 1945, he joined the Makapili escort at the door of the seminary for the obvious purpose of giving armed support to the identification and apprehension of guerrilla suspects. This shows that he has adhered to the enemy and given the latter aid and comfort. He is therefore guilty of treason.

There being no reason to disturb the sentence appealed from, the same is affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Parás, Feria, Perfecto, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

Judgment affirmed.

[No. L-1675. July 30, 1949]

LOCK BEN PING (*alias* JOSEPH LOCK BEN PING), petitioner and appellee, *vs.* THE REPUBLIC OF THE PHILIPPINES, oppositor and appellant.

CITIZENSHIP; RECIPROCITY LAWS; LAWS OF CHINA PERMIT FILIPINOS TO NATURALIZE IN SAID COUNTRY; DOCTRINE REITERATED.—“This Court has already accepted it as a fact in previous naturalization cases that the laws of China permit Filipinos to naturalize in that country.” (*Yee Bo Mann vs. Republic of the Philippines*, G. R. No. L-1606, May 28, 1949.)

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Assistant Solicitor General Ruperto Kapunan, Jr. and Solicitor Lucas Lacson for oppositor-appellant.

Ricardo Reyes for petitioner-appellee.

PARÁS, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu granting the petition for naturalization as a Filipino citizen of Lock Ben Ping *alias* Joseph Lock Ben Ping.

The petitioner is a citizen or subject of China, his legal qualifications to become a Filipino citizen is not questioned, and the only contention raised by the Solicitor General in his brief refers to the alleged failure of the petitioner to establish by competent evidence that under the laws of his country Filipinos may become naturalized citizens or subjects thereof. Specifically, it is insisted for the appellant that the purported copy of the Chinese Naturalization Law (presented in evidence by the petitioner) should not have been considered by the lower court, because it was certified to merely by the Chinese Consul in the Philippines who is not the custodian of the original law. We need not pass

upon this proposition, for "this Court has already accepted it as a fact in previous naturalization cases that the laws of China permit Filipinos to naturalize in that country." (Yee Bo Mann *vs.* Republic of the Philippines, G. R. No. L-1606, May 28, 1949.)

The appealed judgment is therefore affirmed, without costs. So ordered.

Moran, C. J., Ozaeta, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes. JJ., concur.

Judgment affirmed.

[No. L-2855. July 30, 1949]

BORIS MEJOFF, petitioner, *vs.* THE DIRECTOR OF PRISONS,
respondent

1. ALIEN; DEPORTATION; HABEAS CORPUS; UNLESS ALIEN CANNOT BE DEPORTED OR IS BEING INDEFINITELY IMPRISONED, WRIT WILL NOT ISSUE; DOCTRINE REITERATED (BROVSKY *vs.* COMMISSIONER OF IMMIGRATION ET AL., G. R. No. L-2852).—Unless it is shown that deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it can not deport him or unless the detainee is being held for too long a period our courts will not interfere.
2. ID.; ID.; ID.; DELAY OF TWENTY MONTHS IN CARRYING OUT ORDER OF DEPORTATION DOES NOT JUSTIFY ISSUANCE OF WRIT.—A delay of twenty months in carrying out an order of deportation has not been held sufficient to justify the issuance of the writ of habeas corpus.

ORIGINAL ACTION in the Supreme Court. Habeas Corpus.

The facts are stated in the opinion of the court.

The *petitioner* in his own behalf.

First Assistant Solicitor-General Roberto A. Gianzon and *Solicitor Lucas Lacson* for respondent.

BENGZON, J.:

The petitioner Boris Mejoff is an alien of Russian descent who was brought to this country from Shanghai as a secret operative by the Japanese forces during the latter's régime in these Islands. Upon liberation he was arrested as a Japanese spy, by U. S. Army Counter Intelligence Corps. Later he was handed to the Commonwealth Government for disposition in accordance with Commonwealth Act No. 682. Thereafter the People's Court ordered his release. But the deportation board taking his case up, found that having no travel documents Mejoff was illegally in this country, and consequently referred the matter to the immigration authorities. After the corresponding investigation, the Board of Commissioners of Immigration on April 5, 1948, declared that Mejoff had entered the Philippines

illegally in 1944, without inspection and admission by the immigration officials at a designated port of entry and, therefore, it ordered that he be deported on the first available transportation to Russia. The petitioner was then under custody, he having been arrested on March 18, 1948. In May, 1948, he was transferred to the Cebu Provincial Jail together with three other Russians to await the arrival of some Russian vessels. In July and August of that year two boats of Russian nationality called at the Cebu Port. But their masters refused to take petitioner and his companions alleging lack of authority to do so. In October, 1948 after repeated failures to ship this deportee abroad, the authorities removed him to Bilibid Prison at Muntinlupa where he has been confined up to the present time, inasmuch as the Commissioner of Immigration believes it is for the best interests of the country to keep him under detention while arrangements for his deportation are being made.

It is contended on behalf of petitioner that having been brought to the Philippines *legally* by the Japanese forces, he may not now be deported. It is enough to say that the argument would deny to this Government the power and the authority to eject from the Islands any and all of the members of the Nipponese Army of occupation who may still be found hiding in remote places. Which is absurd.

Petitioner likewise contends that he may not be deported, because the statutory period to do that under the laws has long expired. The proposition has no basis. Under section 37 of the Philippine Immigration Act of 1940 any alien who enters this country "without inspection and admission by the immigration authorities at a designated port of entry" is subject to deportation within five years.

In a recent decision of a similar litigation (*Borovsky vs. Commissioner of Immigration*) we denied the request for habeas corpus, saying:

"It must be admitted that temporary detention is a necessary step in the process of exclusion or expulsion of undesirable aliens and that pending arrangements for his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time. However, under established precedents, too long a detention may justify the issuance of a writ of habeas corpus.¹

"The meaning of 'reasonable time, depends upon the circumstances, specially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the governments concerned and the efforts displayed to send the deportee away.² Considering that

¹ *Wong Wing vs. U. S.*, 163 U. S., 228; *Administrative Control of Aliens by Van Vleck* p. 184, citing *Chumura vs. Smith*, 29 Fed. (2d), 287, and *Ex parte Mathews*, 277 Fed., 857.

² Cf. *Clark, Deportation of Aliens* p. 423; *Van Vleck op. cit.* p.

this Government desires to expel the alien, and does not relish keeping him at the people's expense, we must presume it is making efforts to carry out the decree of exclusion by the highest officer of the land. On top of this presumption assurances were made during the oral argument that the Government is really trying to expedite the expulsion of this petitioner. On the other hand, the record fails to show how long he has been under confinement since the last time he was apprehended. Neither does he indicate neglected opportunities to send him abroad. And unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation³ or unless the Government admits that it can not deport him⁴ or unless the detainee is being held for too long a period our courts will not interfere.

"In the United States there were at least two instances in which courts fixed a time limit within which the imprisoned aliens should be deported⁵ otherwise their release would be ordered by writ of habeas corpus. Nevertheless, supposing such precedents apply in this jurisdiction, still we have no sufficient data fairly to fix a definite deadline."

The difference between this and the Borovsky case lies in the fact that the record shows this petitioner has been detained since March, 1948. However, considering that in the United States (where transportation facilities are much greater and diplomatic arrangements are easier to make) a delay of twenty months in carrying out an order of deportation has not been held sufficient to justify the issuance of the writ of habeas corpus,⁶ this petition must be, and it is hereby denied. So ordered.

Moran, C. J., Ozaeta, Padilla, Montemayor, and Reyes, JJ., concur.

PARÁS, J.:

I dissent for the same reasons stated in my dissenting opinion in case No. L-2852.

FERIA, J.:

I dissent on the same ground stated in my dissent in case No. L-2852.

PERFECTO, J., dissenting:

To continue keeping petitioner under confinement is a thing that shocks conscience. Under the circumstances, petitioner is entitled to be released from confinement. He has not been convicted for any offense for which he may

³ Rose vs. Wallis, *supra*.

⁴ Bonder vs. Johnson, 5 Fed. (2d), 238.

⁵ Two months, Caranica vs. Nagle, 28 Fed. (2d), 955; four months, Rose vs. Wallis, *supra*.

⁶ Rose vs. Wallis, 279 Fed., 401. May 1920 to January 1922.

be imprisoned. Government's inability to deport him is no pretext to keep him imprisoned for an indefinite length of time. The constitutional guarantee that no person shall be deprived of liberty without due process of law has been intended to protect all inhabitants or residents who may happen to be under the shadows of the Philippine flag.

Our vote is the same as the one we cast when the case of *Borovsky vs. Commissioner of Immigration*, L-2852, was submitted for decision although, for some misunderstanding, our vote was overlooked at the time the decision was promulgated. Our vote is to grant the petition and to order the immediate release of petitioner, without prejudice for the government to deport him as soon as the government could have the means to do so. In the meantime, petitioner is entitled to live a normal life in a peaceful country, ruled by the principles of law and justice.

TUASON, J.:

I dissent on the same ground stated in my dissent in case No. L-2852.

Petition denied.

[No. L-1261. August 2, 1949]

CATALINA OSMEÑA DE VALENCIA ET AL., plaintiffs and appellants, *vs.* EMILIA RODRIGUEZ ET AL., defendants and appellees.

PARENT AND CHILD; CHILDREN'S RIGHT TO USE THEIR FATHER'S SURNAME; ARTICLE 114, CIVIL CODE APPLIED AND CONSTRUED.—Children may use the surname of their father as a matter of right by reason of the mere fact that they are legitimate children but article 114 of the Civil Code does not mean to grant monopolistic proprietary control to legitimate children over the surname of their father. Said article cannot be interpreted as a prohibition against the use by others of what may happen to be the surname of their father.

APPEAL from an order of the Court of First Instance of Cebu. Piccio, J.

The facts are stated in the opinion of the court.

Sato & Repollo for appellants.

Filemon Sotto for appellees.

PARÁS, J.:

In an action instituted in the Court of First Instance of Cebu, the plaintiffs prayed for an injunction restraining the defendants from using the surname "Valencia." The defendants filed a motion to dismiss, and this was sustained by the lower court. Hence this appeal by the plaintiffs.

The plaintiffs allege, on the one hand, that they (except Catalina Osmeña) are the legitimate children of the de-

fendant Pio E. Valencia in the latter's lawful wedlock with plaintiff Catalina Osmeña; and, upon the other hand, that the defendants, (except Emilia Rodriguez and Pio E. Valencia) are the illegitimate children of Pio E. Valencia with his common-law-wife, defendant Emilia Rodriguez. It is accordingly contended by the plaintiffs that they alone have the right to bear the surname "Valencia," in accordance with article 114 of the Civil Code which provides that legitimate children have the right to bear the surname of the father. To complete their argument, the plaintiffs point out that, under articles 139 and 845 of the Civil Code, illegitimate children (who are not natural) are entitled only to support.

We concede that the plaintiffs may use the surname of their father as a matter of right by reason of the mere fact that they are legitimate children; but we cannot agree to the view that article 114 of the Civil Code, without more, grants monopolistic proprietary control to legitimate children over the surname of their father. In other words, said article has marked a right of which legitimate children may not be deprived, but it cannot be interpreted as a prohibition against the use by others of what may happen to be the surname of their father. If plaintiff's theory were correct, they can stop countless inhabitants from bearing the surname "Valencia."

The defendants' case becomes the stronger when it is remembered that, from all appearances, Pio E. Valencia (the father) acquiesces in the adoption of his surname by the defendants. But even if he objects, the defendants can still use the surname "Valencia," in the absence of any law granting exclusive ownership over a surname.

The appealed order is affirmed, and it is so ordered with costs against the plaintiffs and appellants.

Moran, C. J., Perfecto, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

FERIA, J.:

I concur in the result.

OZAETA, J., concurring and dissenting:

I concur in the affirmance of the order appealed from on the following ground: It appears from paragraph 5 of the complaint that the defendant Pio E. Valencia has allowed his illegitimate children by his codefendant Emilia Rodriguez to bear his surname even after they had reached the age of reason. From this allegation it may be inferred that since their birth these illegitimate children have been given and have borne the surname of their father with the latter's consent. The plaintiffs predicate their case upon articles 114, 139, and 845 of the Civil Code and Rule 103 of the Rules of Court. Article 114 says that legitimate children shall have the right to bear the surnames of their

father and mother; and articles 139 and 845 say that illegitimate children who have not the status of natural children shall be entitled only to support. Rule 103 of the Rules of Court prescribes the procedure for change of name. Upon the facts alleged in the complaint, these statutory provisions are not sufficient, in my opinion, to entitle the plaintiffs to the relief sought by their complaint. The mere fact that legitimate children have the right to bear the surnames of their parents and illegitimate children are entitled only to support, does not necessarily imply that the father may not voluntarily permit his illegitimate children to bear his surname. Rule 103 is not applicable because it is not alleged in the complaint that the twelve defendants who are alleged to be illegitimate children of their codefendant Pio E. Valencia have illegally changed their surname from some other to that of Valencia. On the contrary we infer from the complaint that since their birth they have always borne that surname with the knowledge and consent of their putative father.

I dissent from so much of the majority opinion as may convey the idea (1) that a person who claims to be the illegitimate child of another may use or adopt the surname of the latter even against his will and without his consent, and without authorization from the court; and (2) that any person is free to use any surname he may have a fancy for without the authorization of the court even though he may not have originally borne that surname. Concerning the first idea, I am of the opinion that a person cannot adjudicate to himself a status which adversely affects another without the latter's consent or without the intervention of the court. And as to the second idea, it is clear from Rule 103 that a person cannot adopt a new name, or use one other than that he has originally borne, without complying with the requisites provided for in said rule.

Order affirmed.

[No. L-3059. August 2, 1949]

VICENTE G. CRUZ, AMADO V. HERNANDEZ, JOSEFINA R. PHODACA, SALVADOR MARIÑO, ISAURO M. SANTIAGO, and SEGUNDO AGUSTIN, petitioners, *vs.* PLACIDO RAMOS, FERNANDO MONLEON, and LUIS VILLACERAN, respondents.

1. QUO WARRANTO; WHEN PETITIONERS DO NOT CLAIM TO BE ENTITLED TO THE PUBLIC OFFICE.—Pursuant to section 6 of Rule 68 of the Rules of Court the present petition for quo warranto is not authorized because the petitioners do not claim to be entitled to the public office alleged to be unlawfully held or exercised by the respondents.
2. ID.; PUBLIC OFFICE OR A FRANCHISE, USURPATION OF; GOVERNMENT AS THE PROPER PARTY EXCEPTION.—A public office or a franchise is created or granted by law, and its usurpation or unlawful

exercise is the concern primarily of the Government. Hence the latter as a rule is the party called upon to bring the action for such usurpation or unlawful exercise of an office or franchise. The only exception in which the law permits an individual to bring the action in his own name is when he claims to be entitled to the public office alleged to be usurped or unlawfully held or exercised by another.

ORIGINAL ACTION in the Supreme Court. Quo Warranto.

The facts are stated in the opinion of the court.

Nicolas V. Villaruz for petitioners.

Placido C. Ramos in his own behalf and for the other respondents.

City Fiscal Eugenio Angeles and *Hermenegildo Atienza* as *amici curiæ*.

OZAETA, J.:

This is an original petition of *Quo Warranto* (1) to declare "that the respondents are illegally usurping, intruding into, and/or exercising or holding the office of Members of the Manila Municipal Board," and (2) to oust them from that office.

The six petitioners allege that they are members of the Municipal Board of the City of Manila, they having been elected in the general elections of 1947 together with Gregorio N. Garcia, Andres Santamaria, Pedro Arenas, and Eustaquio Balagtas (who are not parties in this case) to compose the ten members of the Board, for a term of four years expiring on December 31, 1951, and that as such elected members they have the absolute and exclusive right to exercise the prerogatives and privileges of the office of members of said board; that only one vacancy in the board was created by the appointment of Eustaquio Balagtas in March, 1949, as Director of Prisons; that on June 22, 1949, the President of the Philippines appointed the respondents Placido Ramos, Fernando Monleon and Luis Villaceran members of the municipal board to fill the vacancy caused by the appointment of Eustaquio Balagtas as Director of Prisons and two new additional positions created by Republic Act No. 409, known as the Revised Charter of the City of Manila; that said Republic Act No. 409, which increases the congressional districts of the City of Manila from two to four and the membership of the municipal board from ten to twelve, is unconstitutional because section 5 of Article VI of the Constitution authorizes the Congress to apportion legislative districts throughout the Philippines by a general law and not by piecemeal legislation; that at least any two of the respondents are illegally usurping, intruding into, and/or holding or exercising the rights and privileges and discharging the duties exclusively pertaining to the petitioners and other members of the municipal board elected in the general

elections of 1947 because the creation of the office and the appointment of at least any two of the respondents are contrary to section 5, Article VI of the Constitution; and that the unconstitutional appointment and qualification of at least any two of the respondents increases the number of a majority to constitute a quorum to do business in the deliberation of the municipal board, thereby depriving any six of the elective members of the board to do business, inasmuch as the minimum number to constitute a quorum of a 12-member board under Republic Act No. 409 is seven, instead of six.

The respondents in their answer contend (1) that the petitioners have no legal capacity to bring the present action for usurpation of public office, inasmuch as the petitioners do not claim to be entitled to occupy the office now held by the respondents, and that an action for usurpation of office may be brought only by the Solicitor General or by a fiscal in the name of the Republic of the Philippines; (2) that the respondents are lawfully holding the office in question, they having been duly appointed thereto by the President of the Philippines; and (3) that Republic Act No. 409 is constitutional.

The exercise of the prerogative writ of Quo Warranto is governed by Rule 68 of the Rules of Court. Section 1 of said rule provides that an action for the usurpation of office may be brought in the name of the Republic of the Philippines against any person who usurps, intrudes into, or unlawfully holds or exercises a public office. Section 3 provides that the Solicitor General or a fiscal, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in sections 1 and 2 [the latter referring to actions against corporations] can be established by proof, must commence the action. Section 4 provides that the Solicitor General or fiscal may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action to be given to him by the person at whose request and upon whose relation it is brought. And section 6 provides that "a person claiming to be entitled to a public office usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

The present petition is not authorized by section 6 because the petitioners do not claim to be entitled to the public office alleged to be unlawfully held or exercised by the respondents. As a matter of fact the petitioners allege that they are elected members of the municipal board and that their term of office will not expire until December 31, 1951. They do not and cannot claim that the respond-

ents have supplanted them. Their contention that they and the other elected members of the board who are not parties in this case "have the absolute and exclusive right to exercise the prerogatives and privileges and discharge the duties of the office of members of said board," does not bring their case within the purview of section 6. Moreover, such contention is untenable because if the elected councilors had "the absolute and exclusive right" to the membership of the board, then no other person could become a member of the board even if vacancies should be created therein by law or by the death or resignation of an elected member during the four-year term of office of the petitioners; and that is untenable because the councilors are elected individually, each to fill one seat in the board, and not collectively as a body to constitute the board. And if the petitioners should admit as they must that vacancies may be filled by other persons, because an elected councilor cannot fill more than one seat in the board, they must necessarily admit also that their right to membership therein is not exclusive.

The mere fact that the membership of the board was increased from ten to twelve and the quorum from six to seven does not in any way diminish the rights and prerogatives of the individual petitioners as members of the board. Such increase does not result in the diminution of the emolument or in the curtailment of the participation in the deliberations and of the vote of each of the petitioners as a member of the board. The petitioners are bringing this action as individuals and not as a group or juridical entity recognized by law as having a corporate or collective right to assert. As members of the municipal board the six petitioners are not bound to vote solidly to a man on any measure or motion that may come up before the board. Indeed, they are supposed to express their individual opinions and cast their individual votes. Therefore, the increase of the membership of the board and of the quorum necessary to do business does not constitute any invasion of petitioners' right which would entitle them to bring this action.

If, as petitioners contend, Republic Act No. 409 increasing the membership of the board is unconstitutional—a question which we cannot inquire into unless a proper action is brought before us—the remedy available to them as well as to any other citizen is that provided for in section 4 of Rule 68; namely, to relate the matter to the Solicitor General and request him to bring the action in the name of the Republic of the Philippines. The reason of the law is that a public office or a franchise is created or granted by law, and its usurpation or unlawful exercise is the concern primarily of the Government. Hence the latter as a rule is the party called upon to bring the action for such

usurpation or unlawful exercise of an office or franchise. The only exception in which the law permits an individual to bring the action in his own name is when he claims to be entitled to the public office alleged to be usurped or unlawfully held or exercised by another. That, however, is not the present case, as we have hereinabove demonstrated.

It resulting from foregoing that the petitioners have no cause of action, it is neither necessary nor proper for the Court to pass upon the constitutionality of Republic Act No. 409.

The petition is dismissed, with costs.

Moran, C. J., Parás, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Petition dismissed.

[No. L-1494. August 3, 1949]

ALLISON J. GIBBS, as executor of the will of A. D. Gibbs, deceased, ALLISON J. GIBBS and FINLEY J. GIBBS, plaintiffs and appellees, *vs.* EULOGIO RODRIGUEZ, SR., LUZON SURETY Co., INC., PHILIPPINE NATIONAL BANK and MARIANO VILLANUEVA, as Register of Deeds, defendants and appellants.

OBLIGATIONS AND CONTRACTS; PAYMENT; DEBT PAYABLE IN AMERICAN DOLLARS OR ITS EQUIVALENT IN PHILIPPINE PESO; BOTH CURRENCY AS LEGAL TENDER.—Whatever might have been the intrinsic or extrinsic worth of the Japanese war notes which the Bank of Taiwan has received as full satisfaction of the obligations of the appellee's debtors to it, is of no consequence in the present case. As we have already stated, the Japanese war notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government "which takes full responsibility for their usage having the correct amount to back them up" (Proclamation of January 3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine pesos or United States dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy.

APPEAL from a judgment of the Court of First Instance of Manila. Gutierrez David, J.

The facts are stated in the opinion of the court.

Ramon Diokno and Jose W. Diokno for appellants.

Gibbs, Gibbs, Chuidian & Quasha for appellees.

FERIA, J.:

On August 22, 1945, plaintiff filed a complaint alleging, among others, the following:

"(4) That on April 18, 1941, pursuant to a preliminary 'Agreement of Purchase, Sale and Mortgage,' dated April 11, 1940, Allison J. Gibbs, acting for himself and as attorney-in-fact for Allison D.

Gibbs and Finley J. Gibbs, sold by a document entitled "Deed and Mortgage" said two parcels of land and the improvements thereon to Raymundo F. Navarro and R. F. Navarro & Co., for the sum of One hundred twenty-five thousand dollars (\$125,000), United States currency, of which Twelve thousand five hundred dollars (\$12,500), United States currency, was paid in cash; that Raymundo F. Navarro and R. F. Navarro & Co., in the said 'Deed and Mortgage' mortgaged the said two parcels of land in favor of Allison D. Gibbs and Finley J. Gibbs, to secure the payment of the balance of the sale price which they agreed to pay to the said mortgagees in annual installments, plus 5 per cent interest on the deferred payments. * * *.

"(5) That the first installment of \$16,875, United States currency, due on April 11, 1941, was paid to the said mortgagees, but none of the other installments totalling \$126,562.50, United States currency, have been paid and are now due and owing.

"(6) That on August 12, 1941, R. F. Navarro, for himself and in his capacity as president of R. F. Navarro & Co., by document entitled 'Deed of Sale with Assumption of Mortgage,' sold said property for the sum of forty-thousand pesos (P40,000), Philippine currency, to Eulogio Rodriguez, Sr., who in said document assumed and agreed to be bound by the obligation of the mortgage existing thereon in favor of the mortgagees, Allison D. Gibbs, Allison J. Gibbs and Finley J. Gibbs, and all the covenants, agreements, stipulations and conditions relating thereto, as recited in said "Deed and Mortgage" Exhibit "A", to which sale and assumption of mortgage the said mortgagees gave their express conformity; * * *

"(7) That on December 16, 1941, Eulogio Rodriguez, Sr., with the consent of the said mortgagees and by a document entitled 'Deed of assignment with Assumption of Mortgage' assigned his rights, title and interest in and to the said property to the defendant Luzon Surety Co., Inc., for the sum of Forty-two thousand five hundred fifty-six and 21/100 (P42,556.21) pesos, together with his obligations under the 'Deed of Sale with Assumption of Mortgage,' Exhibit B, which were duly assumed by the Luzon Surety Co., Inc., with the express stipulation, however, that Eulogio Rodriguez, Sr., was not relieved of the said obligations and that he, together with the Luzon Surety Co., Inc., were jointly and severally liable to the said mortgagees for the obligations under the said mortgage, * * *.

"(9) That during the Japanese occupation, to wit, on or about July, 1943, the defendant Eulogio Rodriguez, Sr., and the Luzon Surety Co., Inc., without paying any sum to the said mortgagees, and without the latter's knowledge or consent, unlawfully secured from the Japanese Military Administration and from the defendant Mariano Villanueva, who was then purporting to act as Register of Deeds of the City of Manila under the Philippine Republic, a purported cancellation of the mortgage Exhibit A, which purported cancellation was on July 30, 1943, unlawfully annotated on the back of said transfer certificate of title No. 63345 as document No. 709-710/63345, but not on the mortgagee's copy, and without the prior cancellation or surrender of said mortgagee's copy of transfer certificate of title No. 63345." (Record on appeal of the defendants, pp. 4-7.)

The defendants admitted in their amended answer the facts alleged in the above quoted paragraphs 4, 6, 7 of the complaint, and in connection with paragraphs 5 and 9 the defendants alleged that, during the Japanese occupation, the Department of Enemy Property established by the Japanese Military Administration in the City of Manila required the defendants to pay to said department

the debt due from them to the plaintiffs, who were considered as enemy nationals. In view of the fact that one of the plaintiffs, Allison J. Gibbs, to whom the defendant Luzon Surety Co., communicated the said demand, answered that they could not do anything to avoid its compliance, the defendants had to obtain from the Philippine National Bank a loan of ₱120,000 they needed to pay, and in fact had paid, to the Department of Enemy Property the sum of ₱202,500 which they owed then to the plaintiffs. The Director of the Department of Enemy Property of the Japanese Military Administration, had issued a receipt and a deed of cancellation of the mortgage credit of the plaintiffs, and the register of deeds on July 30, 1943, cancelled the mortgage annotated on the back of the transfer certificate title of the property mortgaged.

On September 25, the plaintiff filed a motion to strike the defense set up on the defendant's answer to the effect that they had paid their obligation to the plaintiff to the Department of Enemy Property of the Japanese Military Administration, on the ground that the latter had no authority to demand and accept such payment.

Before the date set for the hearing of the motion to strike the defendant's defense on September 29, 1945, the defendant had filed on September 26, 1945, a motion for summary judgment under section 2, Rule 36, attaching to the motion in support thereof an affidavit of the attorney for the Luzon Surety, Inc., Atty. Arturo Tolentino, to the effect that on July 21, 1943, when the department of Enemy Property, Japanese Military Administration, ordered the Luzon Surety Co., to pay to said Department the defendant's mortgage debt of ₱202,500 to the plaintiffs, he went to see the plaintiff Allison J. Gibbs at the compound of the Holy Ghost College and asked him his advise "as to what action the company should take on the matter, and Attorney Gibbs told him that he cannot do anything and that he understood the situation of Luzon Surety Inc., and he stated further that in that event the credit will be considered as a war damage." Attached to the motion for summary judgment was also an affidavit of defendant Eulogio Rodriguez which states that, in view of the demand of payment made by the Department of Enemy Property, Japanese Military Administration, the defendants had to secure a loan of ₱120,000 from the Philippine National Bank and pay to said department on July 31, 1943, the sum of ₱202,500 due from them to the plaintiffs.

The motion to strike as well as the motion for summary judgment was not acted on by the court until the date set for trial of the case on the merits when both parties, without presenting any evidence, filed their respective memoranda and submitted the case to the lower court for decision.

The plaintiffs did not serve any opposing affidavit under section 3, Rule 36, to contradict the affidavit of Eulogio

Rodriguez to the effect that payment of the mortgage debt in question was made to the Japanese Military Administration, attached to and in support of the motion for summary judgment for the defendants, and they admit, in paragraph 9 of their complaint, that the defendants secured from the Japanese Military Administration and the defendant register of deeds the purported cancellation of the mortgage Exhibit A and, consequently, the payment of the mortgage debt by necessary implication. These facts belie the assertion of the appellees that there is no basis for the lower court's assumption that such payment was made, and therefore the lower court was right in stating in his decision the following:

"Sin estar resueltas las citadas petición de descarte y de sentencia sumaria, las partes, en inteligencia con el Juzgado y a fin de terminarse definitivamente con el asunto en esta instancia, tuvieron a bien que al mismo fuese sometido, en su fondo, previa práctica de sus respectivas pruebas. Se señaló la causa para su vista en el fondo pero en el día señalado los demandantes se limitaron a presentar los Exhibits A, B y C, unidos a la demanda, los cuales fueron admitidos sin oposición, y los demandados sometieron el asunto para su fallo sin practicar prueba alguna. De modo que el asunto fué prácticamente sometido a una sentencia de acuerdo con los escritos de alegaciones únicamente." (Record on Appeal of the defendants, p. 78.)

"El punto principal y decisivo planteado por las alegaciones de las partes es el de si, es o no, legal y válido el pago hecho por los demandados al custodio Japonés.

"Tratándose aquí de un crédito privado de que se ha incautado el beligerente ocupante japonés durante la pasada guerra, este caso tiene similitud al de 'Hongkong & Shanghai Banking Corporation contra Luis Perez Samanillo, Inc., et al., causa civil No. 71009' de este Juzgado. En esta última causa se ha discutido extensamente la legalidad o ilegalidad de los actos del invasor al incautarse de un crédito privado y disponer de ello. En la decisión de dicha causa, este Juzgado hizo las consideraciones y conclusiones que a continuación se acotan y se hacen parte de esta decisión por ser perfectamente aplicables al punto que se discute:"

The lower court declared invalid the payment made by the defendants to the Bureau of Enemy Property, and null and void the cancellation of the mortgage by the register of deeds, and sentenced the defendant to pay to the plaintiff, as soon as the moratorium is lifted, the balance due from the former to the latter, and the defendants appealed from said judgment to this Court.

The lower court was correct in holding that the question raised in the present case is similar to that involved in the case of Hongkong & Shanghai Banking Corporation vs. Luis Perez Samanillo, Inc., et al., G. R. No. L-1345, and in making the reasons and conclusions set forth in support of its decision therein as grounds for its decision in the present case. In Samanillo case, the debt due from the defendant to the plaintiff was paid, by order of the Japanese Military Administration, to the Bank of Taiwan as Liquidator of local enemy banks and Bureau of Enemy

Property of the enemy banks' properties. In the present case the defendants, by order of the Japanese Military Administration, paid to the Bank of Taiwan as Bureau of Enemy Property the debt due from the defendants to the plaintiffs. The question involved in said Samanillo case was whether or not the collection of Samanillo's debt to the Hongkong and Shanghai Banking Corporation by the Bureau of Enemy Property of the Japanese Military Administration, was a confiscation of the plaintiffs' credit. And the question involved in the instant case is whether or not the collection by the Department of Enemy Property, Japanese Military Administration, of the mortgage debt due from the defendants to the plaintiffs was a confiscation of the latter's credit.

This Court reversed the decision of the lower court in the case of Hongkong and Shanghai Banking Corporation *vs.* Luis Perez Samanillo, Inc., et al., on the strength of the ruling of this Court in the case of Haw Pia *vs.* China Banking Corporation, L-554, 45 Off. Gaz. (Supp. to No. 9), 229, in which the facts and law involved were similar to those in Haw Pia. In this last case we held that the collection by the Bank of Taiwan of the China Banking Corporation's credit from the latter's debtor by order of the Japanese Military Administration, was not a confiscation but a sequestration of the enemy private personal property, and therefore the payment by the plaintiff Haw Pia to the Bank of Taiwan was valid and released plaintiff's obligation to the defendant bank. Therefore, we have to reverse also the decision of the lower court in the present case.

The plaintiff's contention that the debt of the defendants in the present case was payable in dollars or its equivalent in Philippine peso at the option of the plaintiffs is immaterial, because both the Philippine pesos and American dollars at the rate of one dollar for two pesos were then legal tender in the Philippines according to section 1612 of the Revised Administrative Code, and for that reason the lower court sentenced the defendants to pay the plaintiffs in dollars or its equivalent in Philippine pesos. Besides we have held in the case of Haw Pia the following:

"But be that as it may, whatever might have been the intrinsic or extrinsic worth of the Japanese war notes which the Bank of Taiwan has received as full satisfaction of the obligations of the appellee's debtors to it, is of no consequence in the present case. As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government 'which takes full responsibility for their usage having the correct amount to back them up (Proclamation of January 3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine pesos or U. S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy. If Japan had won the war or were the victor,

the property or money of said banks sequestrated or impounded by her might be retained by Japan and credited to the respective State of which the owners of said banks were nationals, as a payment on account of the sums payable by them as indemnity under the treaties, and the said owners were to look for compensation in Philippine pesos or U. S. dollars to their respective States. (Treaty of Versailles and other peace treaties entered at the close of the first World War; VI Hackworth Digest of International Law, p. 232.) And if they cannot get any or sufficient compensation either from the enemy or from their States, because of their insolvency or impossibility to pay, they have naturally to suffer, as everybody else, the losses incident to all wars."

In view of the foregoing, the decision appealed from is reversed and the plaintiffs' action is dismissed.

Moran, C. J., Parás, Bengzon, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

Except the pronouncement about legal tender, upon which we wish not to commit ourselves, we concur in the above opinion.

TUASON, J., dissenting:

I dissent on the same general principles and reasons stated in Mr. Justice Hilado's dissenting opinion in *Haw Pia vs. China Banking Corporation*, G. R. No. L-554, and in my dissenting opinion in *Philippine Trust Company vs. Araneta*, G. R. No. L-2734.

Judgment reversed; case dismissed.

[No. L-1514. August 5, 1949]

BONIFACIO VILLAREAL, petitioner, *vs.* THE PEOPLE OF THE PHILIPPINES, respondent

1. APPEAL; QUESTION FOR REVIEW; NECESSITY FOR SPECIFYING ANY PARTICULAR OBJECTION.—Bare statement of facts without specifying any particular objection does not present any question for review by the appellate court.
2. ID.; JUDGMENT OF THE TRIAL COURT; GROUND OF ATTACK SHOULD HAVE BEEN RAISED IN, AND DECIDED BY, INTERMEDIATE APPELLATE COURT.—A judgment of the trial court is not subject to attack in an appeal from an intermediate appellate court's decision unless the ground of the attack was raised or decided by that court, or unless the judgment is clearly void by reason of its having been rendered by the trial court without jurisdiction or by reason of the trial court's having exceeded its jurisdiction.
3. ID.; SECTION OF RULES OF COURT DISPENSING WITH ASSIGNMENT OF ERROR, IN CRIMINAL CASES, CONSTRUED.—The section of the Rules of Court doing away with formal assignments of error does not dispense with the necessity of pointing out in some other form technical and non-fundamental errors which do not affect the substantial rights of an accused to a fair trial, and are not patent. Such technical and non-fundamental errors must be specified with convenient proposition and argument if

they are to be made the basis for modification or reversal of the appealed judgment or for further proceedings.

4. ID.; REVIEWING COURT IS NOT EXPECTED TO SEARCH RECORD FOR EVERY ERROR.—The reviewing court is not expected to search the record for every error of which the appellant might take advantage but did not, nor would it be fair to the adverse party for the court to do so.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Rosendo J. Tansinsin and *Pedro T. Pañganiban* for petitioner.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Jaime de los Angeles* for respondent.

TUASON, J.:

This is an appeal from a decision of the Court of Appeals. The decision affirmed, with slight modification as to the penalty, a judgment of the Court of First Instance of Batangas finding the defendant, petitioner herein, guilty of a violation of article 341 of the Revised Penal Code (White Slavery Trade), and sentencing him to an indeterminate penalty of from 1 year and 1 day to 3 years, 6 months and 20 days of *prisión correccional* with the accessory penalties provided by law, and to pay the costs.

The ground of complaint is that the Court of Appeals unjustifiably sanctioned "the actuations of the Court of First Instance of Batangas in practically railroading the trial of the petitioner and in departing from the accepted and usual course of judicial proceedings which has prejudiced the accused-petitioner and affected his substantial rights as to call for an exercise of the power of supervision of this Honorable Court." Specifically, it is alleged that—

"(a) * * * the complaint against him (accused) was filed by the chief of police on October 15, 1945; the accused arrested on October 16, 1945 (t.s.n., p. 21); the information filed by the provincial fiscal on October 17, 1945; and the arraignment and hearing of the case were set for October 25, 1945 (t.s.n., p. 1);

"(b) That it was only in the evening of October 24, 1945 that the petitioner was able to contract the services of his counsel in the lower court and when he was arraigned on October 25, 1945 (t.s.n., p. 2) he pleaded not guilty and on the same day, by a written motion, his attorney asked that the petitioner and his counsel be given an opportunity to prepare his defense but it was denied. Again when petitioner's turn came to present his evidence, he reiterated his petition to grant him sufficient time to prepare for trial but it was also denied (t. s. n., pp. 9, 14, 19 and 20)."

The record furnishes a different version regarding the time the defendant moved for postponement. It appears

therefrom that a "motion for continuance" was filed before and not after arraignment and the motion was reiterated verbally after one witness had testified for the defense.

The denial to the accused of time to plead or to prepare for trial was not raised or suggested in the Court of Appeals. The defendant-appellant's brief and memorandum filed in the Court of Appeals put in issue only the sufficiency of the evidence. Even though in the brief a recital was made of the dates of the filing of the complaint, of defendant's arrest and arraignment, of the filing of the motion for continuance and of the trial, yet, the purpose of the recital was, not to invalidate the proceeding or to obtain a new trial but to show, for undisclosed reason, that there had been undue haste in the disposal of the case. Bare statement of facts without specifying any particular objection does not present any question for review by the appellate court.

In the present state of the case, the function of this Court is limited to seeing whether the Court of Appeals erred on a matter of law. The Court of Appeals did not err in not reversing the lower court's judgment or remanding the case for new trial on grounds which the court was not requested to consider. If the refusal of the Court of First Instance to grant the defendant time to plead or to prepare for trial was error, it was error of which this Court may not take cognizance unless the appellate court's attention was called thereto. A judgment of the trial court is not subject to attack in an appeal from an intermediate appellate court's decision unless the ground of the attack was raised or decided by that court, or unless the judgment is clearly void by reason of its having been rendered by the trial court without jurisdiction or by reason of the trial court's having exceeded its jurisdiction. The error in question does not come under this category. "Denial of the request for time to answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings." (*McMicking vs. Schields*, 238 U. S., 99; 59 Law ed., 1220; 41 Phil., 971.) Such error may be waived; and it was waived when not urged. Objection made for the first time in this Court came too late to take the place of an objection which should have been made in the brief. "To listen to it now would be, not to prevent but to accomplish, an injustice not to be tolerated except under the most peremptory requirement of law." (*De la Rama vs. De la Rama*, 241 U. S., 154; 60 Law ed., 132.)

Section 7, Rule 120 of the Rules of Court, provides that "The briefs in criminal cases shall have the same contents as provided in sections 17 and 18 of Rule 48 applicable in civil cases except that appellants are not required to make assignment of errors although it is advisable for them to do so." This provision connotes that, unlike in appeals

in civil cases, an assignment of errors is unessential to invoke appellate review. (It should be noted that where the law or the Rules of Court require an assignment of errors to be made, this formality is essential to authorize the appellate court to entertain the appeal. In view of such requirement, an appeal will be dismissed without benefit of review if the brief contains no assignment of errors.)

The rule means that, notwithstanding the absence of an assignment of error, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of accused which are plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict. The section of the Rules of Court doing away with formal assignments of error does not dispense with the necessity of pointing out in some other form technical and non-fundamental errors which do not affect the substantial rights of an accused to a fair trial, and are not patent. Such technical and nonfundamental errors must be specified with convenient proposition and argument if they are to be made the basis for modification or reversal of the appealed judgment or for further proceedings. Attention is invited to section 17(c), Rule 48 of the Rules of Court, which provides that the appellee's brief shall contain, among other things, "the substance of the proof in sufficient detail to make it clearly intelligible, the rulings and orders of the court, * * *, and any other matters necessary to an understanding of the nature of the controversy on the appeal, with page references to the record." The reviewing court is not expected to search the record for every error of which the appellant might take advantage but did not, nor would it be fair to the adverse party for the court to do so.

The judgment of the Court of Appeals is affirmed with costs.

Moran, C. J., Ozaeta, Parás, Bengzon, Padilla, and Montemayor, JJ., concur.

FERIA, J., concurring and dissenting:

I concur in the result, but dissent from one of the grounds on which it is based. The quotation from the decision of the U. S. Supreme Court in *McMicking vs. Schields*, 238 U. S., 99; 59 Law ed., 1220; 41 Phil., 971, to the effect that "Denial of the request for time to answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings," is incomplete.

The conclusion of the Philippine Supreme Court in said case was that "The denial of a right to prepare for trial, and the consequent forcing of the defendant to his defense without any time whatever for preparation is, under the

provisions of our law, equivalent, in our judgment, to a refusal of a legal hearing. It amounts in effect to a denial of a trial. It was an abrogation of that due process of law which is the embodied procedure of the land, and without which a defendant has, in law, no trial at all." (Schiels vs. McMicking, 23 Phil., 526, 537-538.) This conclusion is correct as a general proposition. But the decision of this Court in said case was reversed by the Supreme Court of the United States, because the defendant in that particular case had had sufficient time to prepare his defense. The Court of the United States said:

"* * * Under the circumstances disclosed denial of the request for time to answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings. The cause—admitted to be within the jurisdiction of the court—stood for trial on appeal. The accused had known for weeks the nature of the charge against him. He had notice of the hearing, was present in person and represented by counsel, testified in his own behalf, introduced other evidence, and seems to have received an impartial hearing. There is nothing to show that he needed further time for any proper purpose, and there is no allegation that he desired to offer additional evidence or suffered substantial injury by being forced into trial.
* * *" (McMicking vs. Schiels, 41 Phil., 971, 978.)

Judgment affirmed.

RESOLUTION OF THE SUPREME COURT

REPUBLIC OF THE PHILIPPINES
SUPREME COURT

EXCERPT FROM THE MINUTES OF JANUARY 24, 1951

* * * * *

“Acting on the communication of the Director of Private Schools dated April 19, 1949, indorsed by the Secretary of Education on December 16, 1950, inquiring whether section 5 of Rule 127 of the Rules of Court providing that applicants to the Bar Examinations must ‘have regularly studied law for four years,’ refers to ‘academic year or calendar year’; although the Court had previously declined to answer a similar query, it has finally decided to express its views for the benefit of the numerous law students that may be affected.

“The Court holds that the four years, refer to calendar years, without including courses taken during the vacation periods, except to remove conditions or to make up for failures.

“Mr. Justice Paras reserves his vote.”

* * * * *

SUPREME COURT OF THE PHILIPPINES

LIST OF LAWYERS ADMITTED TO THE PHILIPPINE BAR FROM JANUARY 13, 1949 TO SEPTEMBER 8, 1949

Name	Date of admission
Abaya, Otillo G.	March 28, 1949
Abelgas, Pedro B.	March 28, 1949
Abellana, Francisco M.	March 29, 1949
Abesames, Gaudioso L.	March 28, 1949
Abril, Honorio J.	April 1, 1949
Abrina, Alfredo G.	March 28, 1949
Acebedo, Francisco F.	March 28, 1949
Acuña, Dolores Peralta	April 1, 1949
Adamos, Arturo R.	March 29, 1949
Adonis, Apolinario A.	May 12, 1949
Aduna, Juan T.	April 1, 1949
Agahan, Ladislao C.	Jan. 13, 1949
Aggabao, Vicente B.	March 30, 1949
Agoncillo, Amaury J.	March 28, 1949
Agpalza, Flaviano M.	March 28, 1949
Aguas, Gavino P.	March 28, 1949
Agudo, Jr., Jose C.	March 28, 1949
Aguiling, Jose A.	March 28, 1949
Agustin, Teofilo D.	March 28, 1949
Alameda, Socrates	March 28, 1949
Alas, Jr., Antonio de las.....	March 29, 1949
Alba, Gumersindo R.	April 8, 1949
Alba, Leonor U.	March 29, 1949
Alban, Fructuoso F.	May 18, 1949
Alcid, Quintin B.	March 28, 1949
Alconcel, Trinidad Q.	March 28, 1949
Alcordero, Nicolas	July 12, 1949
Alcuino, Jose V.	March 28, 1949
Alfabeto, Cyrus A.	March 30, 1949
Almazan, Demetrio F.	March 28, 1949
Almeda, Magdaleno D.	April 4, 1949
Almendral, Artemio A.	March 28, 1949
Alonzo, Juan A.	March 29, 1949
Altres, Porfirio C.	July 7, 1949
Alves, Primo B.	March 28, 1949
Amor, Dominador P.	March 28, 1949
Andaya, Arsenio A.	March 28, 1949
Angeles, Blasito E.	March 28, 1949
Antigua, Domingo L.	May 20, 1949
Antonio, Jose T.	March 28, 1949
Añonuevo, Tomas Puhawan.....	March 28, 1949
Apiado, Escolastico P.	March 28, 1949
Aquino, Juan U.	March 28, 1949
Aquino, Leovigildo R.	March 29, 1949
Aranda, Manuel C.	May 21, 1949
Arandilla, Ariston	May 14, 1949
Araos, Felix V.	March 28, 1949
Araulio, Virginia Concepcion	April 2, 1949
Arceo, Lucio Ma.	May 12, 1949
Arche, Juan Ch.	March 2, 1949
Arellano, Benito L.	March 28, 1949
Arellano, Raul O.	March 29, 1949
Arranz, Consuelo	July 21, 1949
Arrieta, Alfonso B.	April 1, 1949
Arro, Jose P.	March 28, 1949
Aruiza, Jose A.	March 28, 1949

Name	Date of admission
Aseron, Mario	March 28, 1949
Aspiras, Anacleto F.	March 28, 1949
Atienza, Antonio S.	March 28, 1949
Aurellado, Juan F.	March 28, 1949
Avanceña, Lucas A.	May 17, 1949
Ave, Bartolome L.	March 29, 1949
Azul, Lupercio Y.	April 6, 1949
Babaran, Nicanor A.	March 31, 1949
Babiera, Angel R.	March 28, 1949
Baeza, Bienvenido J.	March 28, 1949
Baguio, Sergio A.	March 28, 1949
Bajarias, Lamberto O.	March 28, 1949
Balagtas, Alvin C.	June 6, 1949
Balarin, Amando B.	March 28, 1949
Baldonado, Ferico	March 28, 1949
Balcos, Simplicio	April 1, 1949
Baltazar, Oscar L.	March 28, 1949
Baltazar, Tomas	May 12, 1949
Baluyut, Tomas A.	March 28, 1949
Bancaso, Enrique C.	March 28, 1949
Bandonil, Casimiro R.	March 29, 1949
Banguis, Anatolio	March 28, 1949
Banigued, Aquilino D.	March 29, 1949
Banzon, Jose P.	March 28, 1949
Barazon, Faustino	March 29, 1949
Barcelon, Augusto M.	April 8, 1949
Barcelona, Candido Ped.	May 14, 1949
Barcenilla, Ramon C.	March 28, 1949
Barrera, David F.	March 28, 1949
Barrera, Potenciano B.	March 31, 1949
Batitang, Rodolfo G.	March 28, 1949
Batucan, Antonio E.	March 28, 1949
Batungbacal, Jr., Jose	March 28, 1949
Bautista, Lourdes, Macapagal de	March 28, 1949
Bautista, Pedro JI.	March 29, 1949
Belandres, Rebecca B.	March 28, 1949
Belderol, Pedro	April 19, 1949
Beltran, Natalio F.	July 21, 1949
Benavides, Tranquilino	April 9, 1949
Benedicto, Jorge V.	March 28, 1949
Benedicto, Lorenzo V.	May 11, 1949
Benitez, Jr., Emilio	March 28, 1949
Benitez, Vicente O.	March 28, 1949
Bitanga, Bibiano V.	August 4, 1949
Bitanga, Quintin P.	March 29, 1949
Blanco, Fernando P.	March 29, 1949
Bona, Ramon A.	March 28, 1949
Bonicillo, Luciano V.	March 28, 1949
Borja, Francisco B.	March 28, 1949
Borlaza, Marcial C.	March 28, 1949
Borromeo, Fortunato	March 28, 1949
Branzuela, Serafin M.	March 29, 1949
Brillantes, Celestino	March 28, 1949
Brion, Jr., Marciano P.	March 28, 1949
Briones, Joaquin C.	April 11, 1949
Brotamonte, Santiago B.	March 28, 1949
Buagas, Antonio C.	March 28, 1949
Buencamino, Felipe V.	March 29, 1949
Buenviaje, Amando J.	March 28, 1949
Bulahan, Gil E.	March 29, 1949

Name	Date of admission
Bunayog, Emiliano A.	March 30, 1949
Bunyi, Vivencio G.	March 28, 1949
Cabacuñgan, Gaudencio	June 8, 1949
Caballero, Jose C.	March 28, 1949
Caballes, Caridad Albao	March 28, 1949
Cabalza, Nocasio	March 28, 1949
Cabling, Federico G.	March 29, 1949
Cabrera, Baltazar A.	March 28, 1949
Cadhit, George Y.	March 28, 1949
Cajucum, Benedicto S.	March 28, 1949
Cagulada, Francisco T.	April 4, 1949
Calderon, Francisco	May 14, 1949
Calimbo, Tirso P.	March 28, 1949
Calingin, Ignacio A.	April 13, 1949
Caliwara, Eladio A.	March 28, 1949
Calleja, Jr., Ignacio A.	March 28, 1949
Calsado, Ernesto A.	March 29, 1949
Cantada, Ambrosio P.	April 8, 1949
Caraan, Consuelo H.	March 29, 1949
Carbonell, Catalina D.	March 29, 1949
Cariño, Jr., Jose C.	Sept. 8, 1949
Casañas, Jesus Ll.	March 28, 1949
Castelo, Ponciano T.	March 28, 1949
Castigador, Jose L.	March 28, 1949
Castillo, Bienvenido C.	March 28, 1949
Castillo, Rodolfo A.	May 16, 1949
Castor, Paterno	May 17, 1949
Castor, Servillano	March 28, 1949
Castro, Arturo V. de.....	March 29, 1949
Castro, Joaquin W. E.	March 28, 1949
Castro, Jr., Arsenio de.....	March 28, 1949
Catimbang, Basilio M.	March 28, 1949
Celeste, Jose T.	March 31, 1949
Ceniza, Serapion J.	June 16, 1949
Cerna, Zosima Ledesma de la.....	March 28, 1949
Chavez, Mariano C.	May 19, 1949
Chua y Que Julian.....	March 28, 1949
Ciocon, Simplicio R.	March 28, 1949
Clemente, Bonifacio P.	March 28, 1949
Coloma, Procopio A.	March 28, 1949
Consolacion, Francisco	March 28, 1949
Cordero y Asistio, Manuel.....	March 28, 1949
Corrales, Godofredo A.	March 28, 1949
Cortes y Rian, Irene.....	March 28, 1949
Cortes, Justiniano P.	March 28, 1949
Cortes, Cirilo C.	June 23, 1949
Crisostomo, Alfonso F.	March 28, 1949
Cruz, Angel C.	March 28, 1949
Cruz, Domingo R.	March 29, 1949
Cruz, Enrique C.	March 29, 1949
Crystal y Abella, Raymundo.....	April 4, 1949
Cuachon, Orlando N.	May 11, 1949
Cuyos, Eulalia Yb.	May 20, 1949
Dacio, Jose L.	March 28, 1949
Daga, Rizal G.	March 28, 1949
Dalisay, Moises F.	March 28, 1949
Damole, Federico	May 23, 1949
Daquioag, Bernardino G.	March 28, 1949
Datu, Hermogenes V.	March 28, 1949
Dava, Godofredo C.	March 28, 1949

Name	Date of admission
David, Justino L.	May 23, 1949
Dayao, Rosauro E.	March 29, 1949
Day-oan, Consuelo D.	March 28, 1949
Dazo, Angel T.	March 28, 1949
Deaño, Imanuel	March 28, 1949
Deato, Avelino L.	March 28, 1949
Delfin, Arturo	March 28, 1949
Delumpa, Alfredo P.	March 29, 1949
Depra, Juan	July 2, 1949
Diaz, Ramon A.	March 28, 1949
Dichoso, Ricardo Abad.....	June 10, 1949
Dizon, Juanito D.	March 28, 1949
Domingo, Manuel O.	March 28, 1949
Dones, Magin D.	March 29, 1949
Dugenia, Dionisio P.	May 14, 1949
Duño, Calixto G.	March 28, 1949
Duque, Adeodato E.	May 11, 1949
Echauz, Romero R.	May 7, 1949
Echavez, Leon C.	April 1, 1949
Eleosida, Felipe T.	May 17, 1949
Elpa, Homero D.	March 29, 1949
Empleo, Matutino	March 28, 1949
Enerio, Benedicto E.	May 14, 1949
Enriquez, Filomeno T.	May 11, 1949
Enverga, Elias Ro.	March 28, 1949
Ermac, Teodoro	March 29, 1949
Escaño, Jose	March 28, 1949
Escolin, Venicio	March 29, 1949
Espinosa y Flores Jose.....	April 20, 1949
Espiritu, Antonio V.	March 28, 1949
Evangelista, Jose M.	March 28, 1949
Fantone, Andres G.	March 28, 1949
Faylona, Kaulayao V.	March 30, 1949
Fernandez, Alejandro L.	March 28, 1949
Fernandez, Gertrudis E. C.	May 14, 1949
Fernandez, Lope O.	March 28, 1949
Fernandez, Ramon S.	March 29, 1949
Fernando, Felipe D.	March 29, 1949
Ferro, Teresa P.	June 30, 1949
Festin, Benjamin	March 29, 1949
Flores y Garcia, Paterno.....	March 28, 1949
Florida, Vicente T.	May 16, 1949
Fojas, Jovencio N.	March 28, 1949
Fornier, Jose A.	May 10, 1949
Franco, Andres D.	May 18, 1949
Fuentebella, Jr., Enrique A.	March 28, 1949
Gadiane, Asterio A.	April 5, 1949
Gali y Pili, Ismael.....	March 28, 1949
Gamelo, Cesar L.	March 28, 1949
Gamo, Adelisa I.	May 11, 1949
Gancayco, Emilio A.	March 24, 1949
Ganzon, Cirilo Y.	March 28, 1949
Garcia, Emilio G.	March 28, 1949
Garcia, Ferdinand B.	March 28, 1949
Garcia, Recio M.	June 16, 1949
Garcia y Carpio, Amparo.....	March 28, 1949
Genebraldo y Canubida, Brigido.....	March 28, 1949
Generoso, Alfonso E.	March 28, 1949
Gentugaya, Jose G.	March 29, 1949
Gezmundo, Vedasto B.	March 28, 1949

Name	Date of admission
Gillamac, Cesar V.	May 11, 1949
Giron, Elenita Samson-.....	March 28, 1949
Giron, Julieta Collado-.....	March 28, 1949
Golez, Ernesto P.	March 28, 1949
Gonzales, Amador L.	March 29, 1949
Gorres, Paulo G.	March 28, 1949
Gosiengfiao, Eduardo P.	March 28, 1949
Gragasin, Victor D.	March 28, 1949
Granados, Hermenegildo F.	April 2, 1949
Gualberto, Anastacio M.	March 28, 1949
Guanco y Sotto, Franklin.....	May 20, 1949
Guevara, Alfredo A.	March 29, 1949
Guevara, Juan Z.	March 28, 1949
Guerrero, Jaime L.	April 7, 1949
Guinigundo, Serafin C.	March 29, 1949
Gunabe, Luciano U.	March 28, 1949
Gutierrez, Leonardo R.	March 28, 1949
Gutierrez, Valentin C.	March 28, 1949
Guzman, Enrique A. de.....	March 28, 1949
Guzman, Godofredo L.	March 28, 1949
Guzman, Jr., Bernabe de.....	March 31, 1949
Habaradas, Arsenio S.	May 17, 1949
Hermosa, Santiago A.	March 28, 1949
Herrera, Maria Araceli T.	March 28, 1949
Honrado, Amador O.	March 28, 1949
Hontanosas, Castor Y.	March 28, 1949
Ibanez, Lourdes T.	March 28, 1949
Ibay, Benjamin P.	March 31, 1949
Ignacio, Alfredo A.	March 28, 1949
Ildefonso, Jr., Lucio T.	March 29, 1949
Inton, Antonio E.	March 28, 1949
Iriarte, Jesus M.	May 23, 1949
Isidro, Jose B.	March 28, 1949
Jatico, Fortunato C.	March 30, 1949
Javellana, Esteban S.	March 28, 1949
Javellana, Manuel P.	March 28, 1949
Javier, Cesar D.	April 9, 1949
Jesus, Aurelio B. de.....	July 23, 1949
Jesus, Ramon de.....	March 28, 1949
Joaquin, Felix A.	March 28, 1949
Joya y de Leon, Nicanor.....	March 29, 1949
Jugo, Ernesto B.	March 29, 1949
Jurado, Desiderio P.	March 29, 1949
Jurao, Adeudato P.	March 28, 1949
Kintanar, Martin R.	March 28, 1949
Lacania y Mateo, Filomeno.....	March 28, 1949
Laforteza, Tomasa W.	May 18, 1949
Lapuz, Genaro	March 28, 1949
Laus, Gonzalo A.	March 28, 1949
Lazo, Carlos R.	March 28, 1949
Ledesma y Andrada, Santiago	June 30, 1949
Leon, Oscar de.....	April 7, 1949
Leon, Oscar M. de.....	April 20, 1949
Leon, Pedro A de.....	March 28, 1949
Lim, Adorado S.	March 28, 1949
Limcaoco, Conrado T.	March 29, 1949
Lingad, Eugenio	March 28, 1949
Llanto, Virgilio	March 28, 1949
Llena, Evaristo G.	March 28, 1949

Name	Date of admission
Lontok, Lourdes L.	March 28, 1949
Loot, Jaime L.	March 28, 1949
Lopez, Diego Z.	March 28, 1949
Lopez, Nestor T.	April 4, 1949
Lopez, Teodoro G.	May 14, 1949
Lostc, Porfirio L.	March 29, 1949
Lucas, Modesto C.	March 28, 1949
Ludovice, Pedro M.	March 30, 1949
Luis, Isayas	March 29, 1949
Lumakang, Alberto O.	May 11, 1949
Luna, Jr., Juan L.	March 28, 1949
Luna y Ruiz, Estrella.....	March 28, 1949
Luspo, Pedro R.	March 29, 1949
Luspo, Roque R.	March 29, 1949
Luzuriaga, Roberto R. de	April 5, 1949
Mabanag y Ragojo, Alfredo.....	April 2, 1949
Macavinta, Jr., Severino Z.	March 29, 1949
Maceda y Torralba, Emelia.....	March 28, 1949
Madamba, Hermenegildo V.	March 28, 1949
Madridejo, Alejandro K.	March 28, 1949
Maloles, Gemiliano N.	March 28, 1949
Manantan, Alejandro M.	March 28, 1949
Mangubat, Florencio F.	April 4, 1949
Manila, Andres M.	March 29, 1949
Manipula, Eduardo J.	March 29, 1949
Manuel, Esteban C.	March 29, 1949
Manzana, Dominador V.	March 28, 1949
Mapa, Angel G.	March 28, 1949
Mapa, Tomas G.	March 28, 1949
Mar, Manuel B. del.....	March 28, 1949
Maralit, Arsenio P.	March 28, 1949
Maravilla, Honorata R.	May 16, 1949
Marfori, Eugenia	March 28, 1949
Mari, Cristobal L.	March 29, 1949
Mariano, Petronilo	March 29, 1949
Maribao, Gil V.	March 28, 1949
Martinez, Carlos P.	March 28, 1949
Marzo, Marciano	March 28, 1949
Masakayan, Melchor N.	March 28, 1949
Mascariñas, Rafael P.	March 29, 1949
Matutina, Rodrigo	March 28, 1949
Mayuga, Valentin S.	March 28, 1949
Mayugba, Simeon B.	March 28, 1949
Medalla, Maximiano C.	May 12, 1949
Medina, Bartolome B.	March 29, 1949
Mella, Homer C.	March 28, 1949
Mendiola Romualdo, Rodolfo.....	March 29, 1949
Mendoza y Espino, Alejandro.....	March 28, 1949
Mendoza, Elisa C.	March 28, 1949
Mendoza, Jose L.	March 28, 1949
Mendoza, Juan O.	March 29, 1949
Mendoza, Ruben A.	March 28, 1949
Mercado, Antonio T.	March 28, 1949
Mercado, Dionisio P.	March 28, 1949
Meru, Crispino F.	March 28, 1949
Mesa, Zosimo D. de.....	March 28, 1949
Militante, Francis J.	March 28, 1949
Milo, Juan G.	May 16, 1949
Miñeque, Obdulio R.	March 28, 1949
Miravite y Fajardo, Lorenzo.....	March 28, 1949

Name	Date of admission
Misa, Guillermo V.	May 18, 1949
Morada, Felix R.	March 29, 1949
Monsod, Manuel G.	March 28, 1949
Montecillo, Manuel G.	March 28, 1949
Montejo, Alejandro G.	April 18, 1949
Montejo, Jr., Filomeno.....	March 30, 1949
Montilla, Daniel A.	June 23, 1949
Monzon, Simeon F.	March 28, 1949
Muñoz, Raul C.	March 29, 1949
Moya, Dionisio E.	March 29, 1949
Nabor, Domingo Par.	March 28, 1949
Nañadiego, Tagumpay A.	April 5, 1949
Nery, Bienvenido A.	May 20, 1949
Nery, Isidoro C.	March 28, 1949
Nicolas, Henry	April 11, 1949
Nieves, Ramon S.	March 29, 1949
Nisce, Rodolfo M.	April 1, 1949
Nitura, Antonio D.	March 28, 1949
Noble, Eusebio C.	May 13, 1949
Nostratis, Hector A.	March 28, 1949
Noveno, Bienvenido S.	June 8, 1949
Nuevo, Pelayo V.	April 4, 1949
Nuque y Rueda, Simplicio.....	March 28, 1949
Obungen, Arnulfo M.	March 31, 1949
Ocampo, Agapito L. de.....	April 2, 1949
Ocampo, Esteban A. de.....	March 28, 1949
Ochoa, Jose F.	May 12, 1949
O'Gorman, Allan A.	May 10, 1949
Olivares, Jesus P.	March 28, 1949
Omitin, Jr., Eulogio M.	April 1, 1949
Ontal, Guillermo A.	May 3, 1949
Orbos, Guillermo O.	March 29, 1949
Ordoñez, Sedfrey A.	March 29, 1949
Orsolino, Glicerio T.	June 16, 1949
Osorio, Francisco L.	March 29, 1949
Ortigas, Pedro R.	March 28, 1949
Ouano y Jayme, Valentin	March 28, 1949
Padiernos, Fortunato M.	March 29, 1949
Pagkalinawan, Encarnacion Antonio.....	June 8, 1949
Palacios, Eduardo Jesena.....	March 28, 1949
Palacios, Fulgencio P.	March 28, 1949
Paler, Jose G.	June 23, 1949
Palomar, Enrico	March 28, 1949
Pambid, Castor B.	March 28, 1949
Papa, Francisco T.	March 28, 1949
Papica, Dolores I.	March 28, 1949
Pardalis, Augusto A.	March 28, 1949
Paredes, Jr., Geronimo.....	March 29, 1949
Pascual, Jose R.	April 4, 1949
Pascual y Reyes, Ernesto.....	March 30, 1949
Pastor, Manuel P.	March 28, 1949
Patag, Fabiana Jardiolin.....	March 30, 1949
Pellosa, Salome E.	March 28, 1949
Peña, Camilo V.	May 21, 1949
Peralta, Fermin F.	March 28, 1949
Peralta, Fernando A.	May 16, 1949
Peralta, Vivencio L. de.....	March 28, 1949
Perez, Florentino	March 29, 1949
Picson, Bonifacio S.	July 7, 1949

Name	Date of admission
Plaza, Lorenzo M.	March 28, 1949
Poblador y Posadas, Jose.....	March 28, 1949
Prado, Maria Luisa del.....	March 28, 1949
Probianos, Francisco C.	March 28, 1949
Pugeda y Ferrer, Teofilo.....	April 4, 1949
Puno, Ricardo C.	March 28, 1949
Punsal, Nestor G.	March 28, 1949
Punzalan, Primitivo B.	March 29, 1949
Purugganan, Linda P.	June 6, 1949
Purugganan, Lusilo A.	March 29, 1949
Quejada, Fermin B.	Feb. 22, 1949
Quema, Juan	March 31, 1949
Quintana, Marciano V.	March 31, 1949
Quitoriano, Antonio R.	June 6, 1949
Ragodon, Teofilo	March 29, 1949
Rama, Jose V. de la.....	March 29, 1949
Ramirez, Felix B.	March 28, 1949
Ramirez, Octavio R.	March 28, 1949
Ramos, Moises B.	March 28, 1949
Rances, Julian E.	March 29, 1949
Rañeses, Feliciano L.	May 19, 1949
Raquel Santos, Ella Orosa de.....	May 11, 1949
Refi, Emilio	March 28, 1949
Resultan, Ricardo P.	March 28, 1949
Resurreccion, Celedonio O.	March 28, 1949
Rey, Silverio B.	March 28, 1949
Reyes, Antonio M.	March 29, 1949
Reyes, Felina T.	March 28, 1949
Reyes, Ramon T.	March 28, 1949
Reyes, Teodorico D.	March 28, 1949
Reynaldo, Pedro R.	March 28, 1949
Riarte y Go Roa, Juanito de la.....	March 28, 1949
Rimando, Josefina R.	March 28, 1949
Roa, Digno A.	April 20, 1929
Robledo Lamberto	March 29, 1949
Rodas, Ernesto O.	March 29, 1949
Rojas, Jr., Jose D.	March 30, 1949
Roldan, Gabriel	March 29, 1949
Roño, Jose A.	March 28, 1949
Roque y de la Rosa, Francisco.....	March 28, 1949
Rosacia, Felix R.	March 28, 1949
Rosal, Emilio R.	March 28, 1949
Rosales, Vicente M.	March 28, 1949
Rubio, Jose T.	March 29, 1949
Ruffy, Eusimo S.	March 28, 1949
Ruiz, Celso R.	March 28, 1949
Ruiz, Fernando S.	April 4, 1949
Salcedo, Julian F.	March 29, 1949
Salmon, Ramon S.	March 28, 1949
Salomon y Abenoja, Jose.....	March 28, 1949
Salvador, Francisco S.	March 28, 1949
San Agustin, Jr., Primitivo D.	March 29, 1949
San Juan, Alberto P.	March 28, 1949
San Juan, Lauro A.	March 28, 1949
Sanchez, Artemio C.	March 28, 1949
Santiago, Genaro S.	March 29, 1949
Santiago, Teodoro M.	March 30, 1949
Santos, Melquiades D.	March 29, 1949
Santos, Moises de los.....	March 29, 1949

Name	Date of admission
Santos, Roque O.	May 7, 1949
Sarabosing Filomeno	March 29, 1949
Sarmiento, Jesus Gal.	March 28, 1949
Sarmiento, Juan S.	August 11, 1949
Sarmiento, Lino P.	May 10, 1949
Sawit, Homobono C.	March 28, 1949
Sayoc, Aurora T.	March 28, 1949
Seno, Amadeo D.	March 28, 1949
Sepidoza, Angel C.	March 30, 1949
Serapio, Manuel Jn.	March 29, 1949
Serrano, Mariano	March 28, 1949
Sia, Francisco	March 30, 1949
Silvano, Nicanor E.	March 28, 1949
Singson, Mamerto J.	March 30, 1949
Site, Bernardo M.	June 9, 1949
Sobreviñas, Carlos	March 28, 1949
Solatan, Bernardo B.	March 28, 1949
Soller, Arnulfo F.	March 28, 1949
Soller, Simeon A.	March 28, 1949
Soriano, Felix D.	March 28, 1949
Soriano, Purificacion M.	March 28, 1949
Sta. Ana, Lorenzo C.	March 28, 1949
Sta. Ana, Napoleon T.	March 17, 1949
Suarez, Jose P.	March 28, 1949
Sucaldito, Ardeliza	March 29, 1949
Suntay, Jr., Angel	April 1, 1949
Suva, Mateo T.	May 14, 1949
Tabasondra, Emiliano S.	March 28, 1949
Tabios, Benjamin N.	March 28, 1949
Tacason, Federico S.	March 28, 1949
Tagle, Doroteo R.	March 29, 1949
Talion, Alfredo B.	March 28, 1949
Tamayo, Virgilio J.	March 28, 1949
Tan, Artemio	April 5, 1949
Tan, Jr., Bienvenido A.	March 28, 1949
TanChico, Emiliano Alipit	March 28, 1949
Teaño, Avelino C.	March 28, 1949
Tejam, Montano A.	March 30, 1949
Ticao, Reinerio	March 28, 1949
Ticson, Zacarias A.	March 28, 1949
Tiongco, Bernardo C.	March 28, 1949
Tiongson, Benjamin R.	March 28, 1949
Tiongson, Celedonio E.	March 29, 1949
Toledo, Jose V.	July 21, 1949
Tolentino, Pacifico P.	March 29, 1949
Tomines, Celestino V.	March 28, 1949
Tongco Mauro S.	March 28, 1949
Torralba, Sr., Vicente V.	March 28, 1949
Torres y Villanueva, Jose I.	March 28, 1949
Treñas, Efrain B.	March 29, 1949
Tubig, Julian G.	March 28, 1949
Tumulak, Dominador	March 28, 1949
Tumulak, Rogelio N.	May 10, 1949
Ubaldo, Roque R.	May 17, 1949
Ungson, Jr., Angel C.	March 29, 1949
Umil, Carlos B.	March 28, 1949
Unson, Celso Ed. F.	March 28, 1949
Uson, Vicente Q.	March 28, 1949

Name	Date of admission
Valdellon, Rustico	March 28, 1949
Valdez, Antonio V.	March 28, 1949
Valera, Francisco T.	April 9, 1949
Valera, Romualdo	March 29, 1949
Velarde, Andres T.	March 28, 1949
Velasco, Presbitero R.	March 29, 1949
Velasco, Tomas M.	March 28, 1949
Veluz, Jr., Jose I.	March 28, 1949
Veloso, Lourdes D.	March 28, 1949
Ventura, Doroteo E.	March 28, 1949
Vergara, Constantino R.	March 29, 1949
Vicente, Apolinar V.	March 28, 1949
Villano, Manuel B.	March 29, 1949
Villanueva, Delfin Juarez.....	March 28, 1949
Villanueva, Encarnacion S.	March 28, 1949
Villanueva, Jr., Maximiano C.	March 29, 1949
Villanueva, Jr., Serafin	March 28, 1949
Villanueva, Sergio E.	March 28, 1949
Villaruel, Guillermo F.	March 28, 1949
Vinluan, Antonio S.	April 5, 1949
Viray, Florencio M.	March 28, 1949
Yabut, Domingo G.	March 28, 1949
Yalung, Roman A.	March 28, 1949
Yancha, Claro Madeja	March 28, 1949
Yap, Lourdes A.	March 28, 1949
Ygrubay, Amado R.	March 29, 1949
Ynclino, Anatolio	April 4, 1949
Zafranco, Lucia Quiño.....	June 23, 1949
Zamora, Alfredo B.	March 29, 1949
Zarris, Emilio M.	March 28, 1949
Zosa, Segundo Montejo.....	March 30, 1949
Zulueta, Felipe L.	March 28, 1949

DECISIONS OF THE COURT OF APPEALS

[No. 3166-R. October 14, 1948]

YU SIP, plaintiff and appellant, *vs.* VICTORIA PASCUAL, defendant and appellee.¹

PLEADING AND PRACTICE; APPEAL; EXECUTION OF JUDGMENT PENDING APPEAL; POWER OF APPELLATE COURT TO ORDER EXECUTION OF JUDGMENT PENDING APPEAL.—Appellant's contention that pursuant to section 2, Rule 39, of the Rules of Court, the execution pending appeal could only be asked before the perfection of the appeal is correct, in so far as the power of the trial court is concerned, but there is nothing in the law that would deny the appellate Court authority to order the execution of the judgment appealed from unless the appellant files an adequate bond, where the Court is of the opinion that such step is the most practicable for the protection of the interest of a party litigant. Of necessity, the Court can not be left powerless to enforce its orders or to see to it that the judgment it may render will not remain futile and worthless. Upon perfection of the appeal, jurisdiction over the cases passes to the appellate court and the power and control that resides in the lower Court before its perfection is exercised by the Court where the appeal is pending; and if the fact that the appeal is being taken for the purpose of delay is a good reason for the Court of First Instance to order an execution in spite of the pendency of the appeal, the same should be good reason likewise for the appellate Court to take a similar action, particularly since the lower court is no longer in a position to take similar step (*Meralco vs. Estacio*, 40 Off. Gaz. (7) 3rd Supp., p. 176; *Vda. de Syquia vs. Concepcion*, 60 Phil., 186.)

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Pastor L. de Guzman for appellant.

Teodoro R. Dominguez for appellee.

REYES, J. B. L., J.:

In view of the appellant's failure to file a bond of ₱10,000 required by this Court in its Resolution of August 13, 1948, the appellee has filed a petition that the judgment appealed from be ordered executed during the pendency of this appeal.

The records disclose that the plaintiff had obtained in the Court below, the replevin of a truck (which the defendant claimed to be her property) upon filing of a bond of ₱4,000 (civil case No. 1427 of the Court of First Instance of Manila). When the case was called for trial, the plaintiff appellant failed to appear and the lower Court rendered judgment ordering him to return the truck replevied,

¹ See decision of the Supreme Court in G. R. No. L-2636 dated March 25, 1950. Petition for certiorari dismissed, the writ of preliminary injunction dissolved, with costs against the petitioner.

or its value of P2,300, and "in either case, to pay a daily amount of P30 from January 6, 1947, up to the date of its return or until its value is fully paid." The plaintiff appellant filed one motion for reconsideration, and subsequently a motion for new trial on substantially identical ground, both of which were denied by the lower Court. The case was then appealed. In this Court, the plaintiff asked for an extension of time within which to pay the docketing fees and costs of printing and again an extension of time for the filing of his brief as appellant.

Alleging that these facts disclose that the appeal was being taken for the purpose of merely delaying the case, the appellee on July 28, 1948, asked the Court to require appellant to put an additional bond of P30,000 or that the judgment be ordered executed during the pendency of the appeal. Notwithstanding the objections of the appellant, the Court on August 13, 1948, granted the petition and ordered the appellant to file an additional bond of P10,000. This resolution was reaffirmed in another resolution of August 24, 1948, denying reconsideration of the first. No steps were taken by the appellant to secure a review of this order nor has he complied with the same up to this date.

There being a *prima facie* showing that the appeal is being taken solely for the purpose of delaying final disposition of the case, and it appearing further that unless such bond is filed the award for damages in favor of the appellee may be rendered nugatory, this Court is of the opinion that the petition for execution should be granted. Appellant contends that pursuant to section 2, Rule 39, of the Rules of Court, the execution pending appeal could only be asked before the perfection of the appeal. In so far as the power of the trial Court is concerned, appellant's position is correct; but there is nothing in the law that would deny the appellate court authority to order the execution of the judgment appealed from unless the appellant files an adequate bond, where the Court is of the opinion that such step is the most practicable for the protection of the interest of a party litigant. Of necessity, the Court can not be left powerless to enforce its orders or to see to it that the judgment it may render will not remain futile and worthless.

Upon perfection of the appeal, jurisdiction over the case passes to the appellate court and the power and control that resides in the lower court before its perfection is exercised by the court where the appeal is pending; and if the fact that the appeal is being taken for the purpose of delay is a good reason for the Court of First Instance to order an execution in spite of the pendency of the appeal, the same should be good reason likewise for the appellate court to take a similar action, particularly since

the lower Court is no longer in a position to take a similar step (*Meralco vs. Estacio*, 40 Off. Gaz., (7) 3rd supp., p. 176; *Vda. de Syquia vs. Concepcion*, 60 Phil., 186.)

Wherefore, it is ordered that the writ of execution issue as prayed for, without prejudice to the appeal taking its course. So ordered.

Labrador and Paredes, JJ., concur.

Ordered writ of execution be issued.

[No. 2744-R. October 21, 1948]

ADOLFO P. COLUMBRES, protestant and appellee, *vs.* AGUSTIN CAMAGAY, protestee and appellant; BUENAVENTURA L. LOPEZ, intervenor.¹

1. ELECTION LAW; BALLOTS, APPRECIATION OF; MISPLACED VOTES, THEIR VALIDITY; FUNDAMENTAL PRINCIPLE; CASE AT BAR.—The fundamental principle has always been that the intention of the voter must be inferred from what appears on the face of the ballot itself, and that a name written on a space corresponding to an office other than that for which the individual voted for is a candidate, is invalid and cannot be counted for him. The rule is premised on the logical assumption that the voter's intention is manifested by the place where he starts writing the name of the candidate. In the case at bar, however, both name and surname were written in the wrong space. (See: *Mandac vs. Sanonte*, 54 Phil., 706; *Adeser vs. Tago*, 52 Phil., 856, 861; *Coscolluela vs. Gaston*, 63 Phil., 41; *Kempis vs. Bautista*, C. R. No. L-2221, promulgated Aug. 27, 1948.)
2. ID.; ID.; BALLOT WITH NAMES OF PERSONS EITHER FICTITIOUS OR NON-CANDIDATES, VALIDITY OF; CASE AT BAR.—The circumstance of the use of names of persons either fictitious or non-candidates, standing alone is not sufficient to justify considering the ballots as marked, because the number of candidates on both sides was sufficiently numerous (twenty-four just for the municipal positions, according to Exhibit X) to explain and justify a voter's occasional inclusion of extraneous names. The decisions in *Raymundo vs. De Ungria*, *Balajadia vs. Eusala* (3 L. J., 154 and 518) and *Pil vs. Pal* (CA) (8 L. J., 839) are not controlling, for in said cases the names used were of persons who, by their prominence and conspicuousness, or well known incapacity, could not possibly be mistaken as candidates. Such is not the case here in question, and therefore, under the doctrines of the Supreme Court, as confirmed by section 149 (13) of the Revised Election Law, the votes for non-candidates should be regarded as stray votes merely, without affecting the validity of the rest (*Villaviray vs. Alvarez*, 61 Phil., 45; *Salak vs. Espinosa*, 53 Phil., 162; and *Cailles vs. Gomez*, 42 Phil., 534).

APPEAL from a judgment of the Court of First Instance of Pangasinan. De los Santos, J.

The facts are stated in the opinion of the court.

Primicias, Abad, Mencias & Castillo for appellant.

Francisco I. Ortega, Jacinto Callanta and Santiago Reyes for appellee.

¹ See resolution of the Supreme Court in G. R. No. L-2656, January 12, 1949. Petition for certiorari denied.

REYES, J. B. L., J.:

This appeal is taken from a decision of the Court of First Instance of Pangasinan declaring that the protestant appellee Adolfo P. Columbres obtained the highest number of valid votes for the office of municipal mayor of San Jacinto, Pangasinan, in the general elections of November 11, 1947 ousting the protestee Agustin Camagay, who was proclaimed by the Board of Canvassers (by 800 against 779) and dismissing the intervention of the other candidate, Buenaventura Lopez.

By the decision appealed from, the protestant Columbres was adjudicated 765 noncontested votes plus 84 votes admitted by the trial Court, a total of 849 votes; while protestee Camagay was awarded 783 noncontested votes plus 58 votes admitted at the hearing of the protest, or a total of 841 votes. The Court below therefore declared Columbres the winner in the said elections by a plurality of 8 votes. Protestee Agustin Camagak duly perfected an appeal to this Court, while the intervenor did not appeal.

In his brief, appellant assigns seven (7) errors while appellee makes a counter-assignment of four (4).

Errors assigned by the appellant Camagay

ERRORS I AND II

Ballot A-1. The name voted for mayor is Alfredo Columbres, which the lower Court admitted for the reason that, to the rustic ear, Alfredo may sound like Adolfo and there being no other candidate for mayor bearing the surname Columbres the intention of the elector was manifest. We see no reason for deviating from this conclusion. In *Balon vs. Moreno*, 57 Phil., 60, the Supreme Court admitted a ballot for *Miguel* Moreno as valid or *Manuel* Moreno under the *idem sonans* rule.

Ballot A-6. The initial is claimed not to be that of contestant, on the ground that the one voted for mayor is "S. Col." The lower Court read it as "A. Col." and we believe the finding correct, comparing the initial in question with the *esses* (ss) appearing in other parts of the ballot, e. g., the votes for provincial board members (Soliven) and for councilors (Sosimo and S. Dacanay). "Col" is a valid vote for Columbres, following the ruling in *Coscolluela vs. Gaston*, 63 Phil., 41, where a ballot for "I. Cosco" was held valid for protestant Idefonso Coscolluela.

Ballot A-40, is contested by the appellant as illegible except for the first part of the name. It can be read as "A. Colomdris" which is *idem sonans* with the name of contestant, A. Columbres.

Ballot A-131 reads "A. Calumbiris" and not "A. Valmunes" as contended by the appellant. The name clearly corresponds to that of protestant appellee. The involutions of the capital of the surname clearly indicate that

it was meant for a *cee* (c) but the letter was written on its back.

Ballot A-52 was erroneously admitted for the protestant since the one voted for mayor is one A. Calurdace or Calumdace, which does not have the same sound as appellee's name.

Ballot A-59 has in the space for mayor two surnames: "Soleben Colobris," which correspond to the names of two candidates, one Soliven, who was a candidate for the provincial board, and the surname of appellee protestant, Columbres. It appears therefore that two persons were voted for mayor and consequently the same can not be counted for either of them. This ballot should not be counted in favor of protestant, in view of rule (F) laid down by the Supreme Court in *Cailles vs. Gomez*, 42 Phil., 533, followed in *Coscolluela vs. Gaston* (ballot "Gaston Exhibit 577", 63 Phil., 67) and reaffirmed by subsection 11, section 149, of the Revised Election Code.

Ballot A-18 is claimed to have been written by two persons. Barring differences of inclination, which appear due to the voter's effort to find a more comfortable position for writing, there is nothing to substantiate the contentions of appellant. This ballot was consequently properly admitted.

Ballot A-47 (Prec. No. 4) was correctly admitted for the protestant. While the name "A. Calumbres" appears in part crossed by horizontal lines, the indentations at the back of the ballot, as well as the pencil lines on its face show that the surname was written *over* the cancellation. It is clear that the voter was not satisfied with the original spelling of part of the name and, after cancelling the same, decided to rewrite the appellant's surname in the same place. In case of doubt the ballot's validity should be and is upheld.

Ballot A-133 is objected to as written by two persons as in the case of A-18. We agree with the lower Court that the objection is not substantiated. The objections seems to be premised merely on the different pressure with which the name of appellee was written, but the formation of the characters do not justify the contention that more than one person intervened in the preparation of this ballot.

ERROR III

Under this assignment of error appellant questions 62 ballots as improperly admitted in favor of the appellee by the Court below. They are ballots A-2, A-3, A-4, A-9 and A-10; A-12; A-15 and A-16; A-20 to A-34, both inclusive, from A-36 to A-38; A-43 and A-44; A-135 up to and including A-138; A-51; A-53 to A-63, except A-59, both inclusive; A-73 to A-75; A-90 to A-92; A-98 to A-107; and A-141 to A-143.

In all of them the name of appellee is written in the spaces reserved for other offices, sometimes for provincial board member, in others as first councilor, and occasionally for governor. Contestee appellant contends that under the doctrine of the Supreme Court, confirmed by subsection 13, section 149, of the Revised Election Law (RA 180), votes in favor of candidates for an office for which he did not present himself should be held void but shall not invalidate the whole ballot, which should be merely regarded as containing stray votes.

The lower Court admitted these ballots for the contestant Columbres on the theory that the original doctrine of the Supreme Court in *Aviado vs. Talens*, 52 Phil., 665 and *Lucero vs. Guzman*, 45 Phil., 852, has been relinquished and abandoned in its later decisions of *Mandac vs. Samonte*, 54 Phil., 706; *Adeser vs. Tago*, 52 Phil., 856, 861, and *Coscolluela vs. Gaston*, 63 Phil., 41; that the intention of the voter may be made to appear *aliunde*, and the vote counted if the court is satisfied that the intention was to vote for the protestant mayor. We believe that the lower Court was mistaken in its ruling. The fundamental principle has always been that the intention of the voter must be inferred from what appears on the face of the ballot itself, and that a name written on a space corresponding to an office other than that for which the individual voted for is a candidate, is invalid and can not be counted for him. The rule in *Mandac vs. Samonte* did not deviate from this principle, since the name in Exhibit 50 of the contestee in said case, while written above the line for governor, was below the line for representative and was therefore counted for governor, being inscribed in the space corresponding to that office. Again, in *Adeser vs. Tago*, ballots 1-A and 5-A were admitted because the first part of the name was written in the proper space while the surname fell below it. The rule is premised on the logical assumption that the voter's intention is manifested by the place where he starts writing the name of the candidate. In the case before us, however, both name and surname are written in the wrong space. In *Coscolluela vs. Gaston*, the ballots where the voters wrote the name of the protestee in a space corresponding to another office, for which the claimant was not a candidate, but had appended to the name of the designations of "governor" or "provincial governor," were counted as votes for governor, because the intention of the voters was clear from the ballot itself, without necessity of considering any other extraneous circumstance.

This question has been conclusively settled by the Supreme Court of the Islands in its recent decision in *Kempis vs. Bautista*, G. R. No. L-2221, promulgated in August 27, 1948. Interpreting and applying the same provisions of the

Revised Election Law now invoked, the highest tribunal made the following ruling:

"En la segunda linea correspondiente a los dos cargos de miembros de la Junta Provincial en las balotas marcadas con K, K-1, K-6, K-7, K-8, K-10, K-13, y K-33, y en la primera linea para los mismos cargos en las balotas K-20, K-21, K-23, K-24, K-26, K-27, K-31, y K-32, aparece escrito el nombre de S. Kempis. No deben contarse estos votos a favor de el porque son votos para miembro de la Junta Provincial y no para el cargo de alcalde.

"En el espacio correspondiente al cargo de vice-alcalde aparece "S. Kimpis" en las balotas K-3, K-12, K-25, K-36, K-38, y K-39. No pueden contarse como votos para alcalde.

"En las balotas K-9, y K-11, aparece votado S. Kempis para concejal y no para alcalde. Estos votos no deben contarse a favor del protestante.

"Para que candidato pueda reclamar con exito una balota es preciso que en ella este escrito su nombre en el encasillado correspondiente al cargo al cual es candidato. Si su nombre aparece escrito en el espacio correspondiente a un cargo la presunción es que fue votado para dicho cargo y no para otro. (Manalo *contra* Sevilla, 24 Jur. Fil., 631; Ya lung *contra* Atienza, 52 Jur. Fil., 810; Salak *contra* Espinosa, 53 Jur. Fil., 173.)

"En las balotas K-16 y K-34, ha sido votado el protestante para el cargo de alcalde. No erro el juzgado *a quo* al adjudicarle los dos votos.

"Invocando las decisiones de los asuntos de Villavert *contra* Lim, 62 Jur. Fil., 191, y Mendoza *contra* Mendiola, 53 Jur. Fil., 285, el apelado alega que el juzgado *a quo* erro al adjudicar la balota B a favor del apelante. En dicha balota aparece "N. Bautista" en la raya correspondiente al cargo de vice alcalde. No debio haber el juzgado *a quo* adjudicado ese voto al protestado como un voto para alcalde. Debe desontarse, por tanto, un voto del protestado-apelante."

Considerable emphasis is placed by the appellee Columbres on the fact that he was well known as a candidate for Mayor and for no other office; and he avers that it is to be presumed that where his name was written anywhere in the ballot the intention must have been to vote for him as Mayor. On the other hand, there is an equal presumption that an elector intends to vote a person for the office opposite which he writes the candidate's name. In the absence of other evidence we must necessarily abide by the intention disclosed in the ballot itself, for it is the only competent proof of the voter's intention. This has been the invariable rule, confirmed by the provisions of the Revised Election Law. It would have been easy for the Legislature to alter the rule by providing that whenever the candidate's name should appear in a ballot, it should be counted as his vote for the office for which he presented a certificate of candidacy. But instead of so doing, the Legislature in section 149 (13) of Republic Act 180, chose to ratify the doctrine of the Supreme Court invalidating misplaced votes, thereby asserting its policy that interpreters of the electorate's will should abide by what appears on the face of

the ballot and not lose themselves in conjectures as to what the elector's intention *might* have been.

It is argued that section 149(13) is obligatory only on the boards of election inspectors and not on the Courts. The logical consequence of this allegation would be that the Election Law intended to provoke and encourage electoral protests, and that proclamations by the boards of canvassers should be distrusted and considered of no weight. If that were the intention of the law, counting by election inspectors might have been dispensed with altogether and that function transferred directly to the Courts.

Under this assignment of error, sixty-two (62) ballots should be deducted from the total awarded to the protestant appellee.

ERROR IV

Appellant claims the following ballots:

Exhibit C-8, which the lower Court rejected as written by two hands. We believe this to be error. The difference in between the name Agustin and the surname Camagay was evidently due to the circumstance that the voter inadvertently started writing the first name at the middle of the line and had to use smaller characters in writing the surname (Camagay) because of lack of space. Both name and surname contain the same number of letters, and measurement shows that, if the voter had not written "Camagay" in smaller characters, he would not have been able to write the surname in the space remaining after "Agustin". This ballot should have allowed as valid for the appellant protestee.

Exhibits C-73, C-76 and C-79 were rejected by the lower Court on the ground that the same were marked with the name "Jacinto Solomon" voted for as councilor, when said Solomon was not a candidate. The lower Court declared that the campaign of the various candidates having been intense, it was inconceivable that Jacinto Solomon should be taken by the voter as a candidate. This ruling goes counter to the express provision of subsection 13, section 149 of the Revised Election Law, to the effect that any vote in favor of a person who has not filed a certificate of candidacy shall be counted as stray vote but shall not invalidate the whole ballot. Since we are not referred to any other evidence of an intention to mark said ballots, the ruling of the lower Court is reversed, being contrary to the doctrine of *Villaviray vs. Alvarez*, 61 Phil., 42 and *Salak vs. Espinosa*, 53 Phil., 102. The three ballots should have been admitted.

Exhibits C-78 and C-80 were rejected on the ground that the word written for mayor are "A. Camgi" in the first and "A. Camgag" in the second, which according to the Court below are not *idem sonans* with the name of appellant Agustin Camagay. We hold this to be error as to

Exhibit C-80, where the appellant is plainly voted for, the last letter being clearly a deformed "y". Exhibit C-78, on the other hand, was correctly rejected, as the name written is no *idem sonans* with that of appellant Camagay.

Exhibit C-43 was rejected for the appellant simply because the last name written for councilor "Maoricio Bulelo" appears in blue pencil, while the rest of the ballot was written in indelible pencil. This difference is not sufficient to invalidate this ballot, considering that in the last space for councilor (No. 6), inside the curve of capital *em* (M) of the last name, the writing reveals an interrupted stroke in indelible pencil which is plainly apparent. This indicates that for some reason or other the elector could not continue writing in the official pencil (in all probability because the point of the same was broken) and used a blue pencil instead. Subsection 10, section 149, of Republic Act No. 180, provides that ballots written wholly or in part with lead pencil or ink should be considered as valid. In the absence of other evidence, we can not say that the elector intended to mark and invalidate his ballot.

Exhibit C-67 was also incorrectly rejected as invalid for the appellant, it appearing very clearly that the voter wrote the name Agustin, which corresponds to that of appellant, although without any surname. This ballot is valid under subsection 1, section 149, since it is not contended or proved that there is another candidate with the same name for the same office. The trial Court in not reading the name as Agustin failed to note that in overwriting and *en* (n) the voter merely intended to amend and correct his previous writing strokes.

Exhibit C-103 is marked with the name "E. Fernandez" in block letters, clearly distinguishable from the rest of the ballot written in current script. We see no reason for this voter's sudden switch from the ordinary handwriting to one radically different, unless his intention was to be able to identify his ballot subsequently. This ballot was correctly rejected.

ERROR V

Appellant contends that the Court *a quo* erred in rejecting ballots C-38, C-42, C-54, C-56, and C-107, where his name appears written but not in the space for mayor, when the same Court admitted ballots for the appellee wherein the latter appears voted for other offices. In view of our ruling that such ballots are not admissible, the rejection of those discussed under this assignment of error can not be disturbed.

ERROR VI

Both parties agree that the Court erred with regard to ballots A-1 and A-11 (which the decision appealed from mistakenly designates as A-2); but no resulting prejudice appears, both ballots having been admitted.

The same can be said as to ballot A-144, which appellant claims to have been counted twice. The error was compensated by the failure to include ballot A-5, which was not contested.

Errors assigned by the Appellee Columbres

I

Thirteen ballots are claimed to have been erroneously adjudicated to the contestee appellant Camagay: C-10, C-11, C-18, C-74, C-75, C-77, C-25, C-34, C-35, C-45, C-50, C-100, C-101; all of which appellee contends to be *marked* by the use of names of persons either fictitious or noncandidates. This circumstance standing alone is not sufficient to justify considering the ballots as marked, because the number of candidates on both sides was sufficiently numerous (twenty-four just for the municipal positions, according to Exhibit X) to explain and justify a voter's occasional inclusion of extraneous names. The decisions in *Raymundo vs. De Ungria*, *Balajadia vs. Eusala* (3 L. J., 154 and 518) and *Pil vs. Pal* (CA) (8 L. J., 839) are not controlling, for in said cases the names used were of persons who, by their prominence and conspicuousness, or well known incapacity, could not possibly be mistaken as candidates. Such is not the case here, and therefore, under the doctrine of the Supreme Court, as confirmed by section 149 (13) of the Revised Election Law, the votes for noncandidates should be regarded as stray votes merely, without affecting the validity of the rest (*Villaviray vs. Alvarez*, 61 Phil., 45; *Salak vs. Espinosa*, 53 Phil., 162, and *Cailles vs. Gomez*, 42 Phil., 534).

Ballots C-13 and C-14 are contested as written by two hands, due to the appearance of two forms of capital A thereon. This sole circumstance is insufficient. Writers not infrequently use two forms of characters (there are only two capital A's in each ballot); and the rest of the writing is clearly identical in each. No error was committed in allowing both.

Ballot C-15 is objected to on the same ground. No special characteristics are pointed in support of the argument and we find no substantial variation in the angular handwriting of the voter.

The same remarks apply to *ballot C-48*, where the only change is in the progressive thickening of the strokes, evidently due to the blunting of the pencil used.

This assignment of error is overruled.

III

As already remarked in discussing the appellant's sixth assignment of error, the trial Court's failure to count ballot A-5 was compensated by its having counted ballot A-144

two times, first in the group of noncandidated ballots and again in the ballots where the name of the contestant appellee was misplaced. No prejudice resulted therefore, since the two mistakes neutralize each other.

IV

Being a consequence of the previous ones, this error needs no separate discussion.

RECAPITULATION

To the 765 noncontested votes for appellee, the lower Court added 84 admitted at the trial. These should be reduced to 20, by deducting the two ballots (A-52 and A-59) discussed under appellant's first assignment of error, and the 62 ballots where his name was not written in the proper space. The total votes for Adolfo P. Columbres should be reduced to 785 votes only.

To the 783 noncontested votes for appellant, and the 58 votes admitted by the lower Court (or a total of 841) there should be added seven (7) votes; ballots C-8, C-73, C-76, C-79, C-80, C-43 and C-67, discussed under appellant's fourth assignment of error. The total of valid votes for contestee appellant Agustin Camagay should therefore be 848, or a majority of sixty-three (63) votes (848 *vs.* 785) over the contestant appellee Adolfo P. Columbres.

Wherefore, the decision of the lower Court is reversed, and the protest is order dismissed, with costs against appellee.

Gutierrez David and Borromeo, JJ., concur.

Judgment reversed and protest ordered dismissed.

RESOLUTION

REYES, J. B. L., J.:

Appellant and appellee having filed motion praying, for the reasons therein stated, that the decision of October 21, 1948, be reconsidered and modified.

Considering that the 41 ballots claimed by protestant appellee for the first time in his motion to reconsider are not specified and are not before the Court, no assignment of error being made regarding the same; that this Court is bound by the doctrine of the Honorable Supreme Court in *Kempis vs. Bautista* (Sc.,-RG No. L-2221) and that the occasional inclusion of name of noncandidates is not sufficient evidence of a deliberate plan to identify the elector's ballots;

Considering also that the expenses claimed by the protestee appellant must be deemed, and not, included in the costs awarded by this Court, since section 180 of the Election Law, in its last paragraph, specifically provides that—

"In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same *as costs* from the losing party;"

The motions for reconsideration of both appellant and appellee are hereby denied.

Gutierrez David and Borromeo, JJ., concur.

Motions denied.

[No. 2953-R. December 31, 1948]

JUAN SUMALBAG, protestant and appellant, *vs.* TEODORO JOSE, protestee and appellee.¹

1. ELECTION LAW; APPEAL; ASSIGNMENT OF ERRORS ALLOWABLE TO CONTESTEE NOTWITHSTANDING HIS FAILURE TO APPEAL.—Although the contestee in an election contest fails to appeal from the judgment of the lower court, he may make an assignment of errors (*Mendoza vs. Mendiola* 53 Phil., 270).
2. ID.; ID.; BALLOT IS THE BEST EVIDENCE OF VOTE; CASE AT BAR.—It is settled in this jurisdiction, by a long series of decisions of our Supreme Court, that the ballot constitutes the best evidence of the vote unless the same has been substituted or altered in any manner after the election. In the case at bar, no tampering, supplantation or substitution of the ballots in question have been proven; hence, they should be given due value, even if the voters had any vacillation or confusion in the selection of their ballots. Incidentally, it may be said that there was no need for the court to admit the testimony of the voters to show the persons for whom they voted in Precinct No. 15, for the ballots in question are the best evidence of their votes and their testimonies, whatever they may be, cannot go against the ballots.
3. ID.; ID.; COURT'S JURISDICTION TO MAKE AN ORIGINAL COUNTING OF VOTES.—The lower court has jurisdiction to make an original counting of votes and to adjudicate the votes found by the Commissioners during the revision of the ballots in question, notwithstanding that there was no counting made of the ballots by the Board of Inspectors or statement by said Board of the result of the counting which was not made. (*Sagcal vs. Gallardo*, CA-G. R. No. 3398-R, promulgated on Dec. 22, 1948).
4. ID.; ID.; MOTION PROTEST; COURT'S JURISDICTION TO DECIDE CASE AFTER ESTABLISHMENT OF JURISDICTIONAL FACTS AND SUBMISSION OF PROTEST; CASE AT BAR.—Section 174 of the Revised Election Code provides that the only jurisdictional facts that should be alleged in the motion protest are: (a) that the protestant is a candidate voted for in said election and has presented a certificate of candidacy; (b) that the protestee has been proclaimed in said election; and (c) the date when the proclamation of the result of the election was made so that it may be seen that the protest was filed within the term fixed by the law, that is, within two weeks after the proclamation of the result of the election. All these jurisdictional facts were alleged in the motion protest, hence the trial court had jurisdiction over the point in question. It is settled that after the jurisdictional facts have been established and the election protest submitted to a court, it is its bounden duty to decide it and to declare who has been elected in the contested election. As could be readily seen from the provision of section 177 of the Revised Election Code, the failure of the protestant to allege

¹ See resolution of the Supreme Court in G. R. No. L-1757, May 19, 1949. Petition for certiorari is dismissed for lack of merit.

in his protest the number of votes he had received in the uncontested precincts is no barrier in proving that fact in order to establish that he was the one legally elected and should have been proclaimed in lieu of the protestee. There being in the record sufficient evidence to establish the number of votes of the protestant and the protestee in the uncontested electoral precincts of Cuyapo, to which the number of votes they received in Precinct No. 15 could be added, it is held that the dismissal of the case by the lower court was a reversible error. Courts of justice shall not dispose of cases on technical grounds, and particularly in election cases the courts must not lay down any ruling which might defeat the will of the people. Whenever possible, the judgment shall tend to uphold the free expression of the will of the majority of the electorate, and to that end the provisions of law are to be liberally construed.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Melendres, J.

The facts are stated in the opinion of the court.

Mariano Sta. Romana for appellant.

Jose Daquel, Florencio Florendo and *Macario Peralta* for appellee.

ENDENCIA, J.:

In the general elections of November 11, 1947, Juan Sumalbag, the herein appellant, Teodoro Jose, the herein appellee, Fabian Sandoval, Jose Garcia and Tomas Corpuz, were candidates for the position of Municipal Mayor of the municipality of Cuyapo, province of Nueva Ecija. On November 14, 1947, the Municipal Board of Canvassers of Cuyapo certified and proclaimed Teodoro Jose as duly elected Mayor of said municipality. On November 27, 1947, or to be more exact, fourteen days after the proclamation of Teodoro Jose as Mayor elect, Juan Sumalbag filed his motion protest based on the following grounds:

"1. That the petitioner and the respondents are all of legal ages, residents of Cuyapo, Nueva Ecija, qualified electors, and candidates for the office of municipal mayor of Cuyapo, Nueva Ecija, who have filed their certificates of candidacy for the said office, and voted for the said office, at the last election held on November 11, 1947.

"2. That on November 13, 1947, the municipal council acting as the municipal board of canvassers proclaimed the respondent, Teodoro Jose, as the mayor-elect of the municipality of Cuyapo, Nueva Ecija.

"3. That on November 11, 1947, while the ballots of Precinct No. 15, at the barrio of Nagmisahan, Cuyapo, Nueva Ecija, were being counted by the election inspectors therein, an armed group of men entered in the said precinct and ordered the said persons to stop counting and to lie down and because of fear the said inspectors placed the said ballots in the box and locked the same, and, thru force and violence, the said armed band took and stole the said ballot box of Precinct No. 15.

"4. That the said ballot box of Precinct No. 15 was found by the Provincial Fiscal of Nueva Ecija intact, although wet, and it is now in his possession and custody.

"5. That, if the said ballots of Precinct No. 15, Cuyapo, Nueva Ecija, would be counted in the result of the said election, which the municipal board of canvassers was not able to do because of its loss,

the result of the election of municipal mayor of Cuyapo, Nueva Ecija, would have been different as it was proclaimed by the said board, and the petitioner should have been elected and proclaimed as such mayor for the reason that the said petitioner was obtaining an overwhelming votes in the said precinct when the ballot box was stolen and taken away."

After having been properly summoned, appellee Teodoro Jose filed his answer wherein he entered a general denial of the essential allegations of the motion protest and averred three affirmative defenses, which are as follows:

"As first affirmative defense to the election protest, this answering respondent alleges:

"That petitioner has been sentenced by final judgment by the Court of First Instance of Nueva Ecija for the crime of homicide to suffer as he suffered imprisonment for more than one year.

"As second special affirmative defense, to the election protest, the respondent alleges that the ballot boxes pertaining to Precinct No. 15 of the municipality of Cuyapo, Nueva Ecija, which are alleged to be now in the possession of the Provincial Fiscal do not contain the ballots prepared and cast by the electors in Precinct No. 15 during the election, and that the ballots now found in said boxes are either tampered with or substituted by other ballots subsequently prepared by unknown but interested persons.

"As third special affirmative defense, respondent alleges that petitioner does not state any cause of action in his unverified petition. Although he averred that he and respondent as candidates for the office of municipal mayor of Cuyapo, Nueva Ecija were voted upon for said office in the elections of November 11, 1947 and that the answering respondent was proclaimed by the Municipal Council acting as a Municipal Board of Canvassers as the Mayor-elect of the Municipality of Cuyapo, said petitioner has failed to allege in his protest the number of votes which were cast in favor of the petitioner and the answering respondent as found by the Municipal Board of Canvassers. The petitioner, likewise, failed to allege in his petition the number of votes obtained by him and by the herein respondent in Precinct No. 15 at the barrio of Nagmisahan, thus preventing this Honorable Court to determine from the allegations of the election protest as to which candidate obtained the plurality votes in the general elections for Mayor. Furthermore, it is admitted by the petitioner that the ballots cast in said Precinct No. 15 were lost and found under circumstances which invalidated the ballots cast in said precinct."

On December 9, 1947, Teodoro Jose petitioned the court that in accordance with section 5, Rule 8 of the Rules of Court, a preliminary hearing be had on said affirmative defenses. The court granted said motion and the same was duly heard on December 16, 1948. The parties were then required to submit their memorandum with authorities, and on December 31, 1947, Teodoro Jose filed his memorandum and on January 3, 1948, Juan Sumalbag filed his. On February 5, 1948, the court, acting upon the motion for dismissal of the case in accordance with the third affirmative defense averred in the answer, entered the following order:

"Esta causa es sobre protesta electoral: Juan Sumalbag, el protestante, y Teodoro Jose, el principal protestado, con Tomas Corpuz y Jose Garcia, otros protestados. La protesta no está jurada, condición

no exigida en la sección 174, Art. 12 del Código Electoral. En el párrafo 3 de la protesta se dice lo siguiente:

'That on November 11, 1947, while the ballots of Precinct No. 15, at the barrio of Nagmisahan, Cuyapo, Nueva Ecija, were being counted by the election inspectors therein, an armed group of men entered in the said precinct and ordered the said persons to stop counting and to lie down and because of fear the said inspectors placed the said ballots in the box and locked the same, and, thru force and violence, the said armed band took and stole the said ballot box of Precinct No. 15.'

"Contra esta alegación, el protestado Teodoro Jose, en el párrafo 3 de su contestación, ha hecho una negación específica.

"El Juzgado, con vista de la moción de sobreseimiento del protestado de fecha 8 de Diciembre, pidió a las partes que sometiesen autoridades sobre la admisibilidad de las urnas del Precincto No. 15, afectadas tanto en la protesta como en la contestación objeto de la moción de sobreseimiento. Después de sometidos los informes correspondientes, el Juzgado dictó su orden del 9 de Enero de este año resolviendo que, si ha de abrirse o no las urnas del Precincto No. 15 de Cuyapo, usadas en las elecciones pasadas, dependía de previas pruebas sobre las condiciones en que se hallen dichas urnas en cuanto sean presentadas al Juzgado.

"Es verdad que la Sección 175, del Art. 12 del Código Electoral confiere al Juzgado discreción amplia en cuanto a lo que se debe hacer de las urnas usadas en la elección, no solamente con vista de las alegaciones de la protesta sino de la contestación propia; pero hemos preferido que antes de hacer uso de esta discreción tuviésemos base segura, así es que se ha señalado a vista esta causa para recibir pruebas sobre las condiciones de las urnas. Estas pruebas fueron sometidas mediante los testimonios de Tomas Corpus, Fiscal Amado S. Santiago, Rosendo Evangelista, Filemon Cariño, chairman de la Junta de Inspectores de Elección del Precincto No. 15 de Cuyapo, Cristino Antonio, un inspector de elección del mismo precincto, Amado Villarosa y los Exhibitos A, B, C, D, D-1, E y E-1, que, objetados, fueron admitidos por parte del protestante; y Vicente de la Cruz con Ricardo Ramirez y el Exhibito 1, todos por parte del protestado Teodoro Jose.

"Por medio de los testimonios de los testigos de la parte protestante se ha probado, fuera de toda duda, que las urnas, blanca y encarnada, del Precincto No. 15 del municipio de Cuyapo, usadas en las elecciones del 11 de Noviembre de 1947, estando vacías y cerradas, con candados puestos en sus respectivos enganches, pero no cerrados, fueron robados a eso de las 8:05 de la noche del día de antes por gente armada y llevadas por los mismos a un depósito de agua donde fueron encontradas por el testigo Amado Villarosa estando éste para pescar; que el robo ocurrió después ya de contadas las balotas, o terminada la votación propia y después ya de separadas las balotas para cargos nacionales de las balotas para cargos locales; que la gente armada, una de revolver calibre .45 y otra de Thompson, tan pronto como entraron en el precincto, ordenaron que todo el mundo se tumbase en tierra, boca abajo, como así se hizo; después apagaron las luces, y después de apagadas las luces las balotas fueron metidas en la urna blanca, según los testigos del protestante, o metidas en un saco, según los testigos del protestado, pero que todos los mismos afirman que todos los materiales de elección, puestos sobre la mesa, fueron sacados por la gente armada; después esta gente, antes de salir, pero fuera ya del Precincto, dió el siguiente aviso 'Squad, fire!', y, efectivamente, sonaron varios tiros y después se marcharon; que en total la gente armada no sería menos de 7.

"Apreciando el valor probatorio de las pruebas de cada parte, encontramos mas corroboración y mas consistencia en los testimonios de

los testigos de la parte protestante, y menos incongruencia, como hemos notado, en los testimonios de los testigos de la parte protestada, por ejemplo, los testigos del protestante, unánimes y contestes, afirmaron que las luces eran de vela, unas y la otra de petróleo, que la primera se apagó pero la otra se conservó, mientras que los ya pocos testigos de la parte protestada han diversificado en su testimonio: el primero dijo que las luces eran unas de vela y otra de petróleo, el segundo afirmó que las luces eran de carburo y de petróleo; el primero dijo que se conservó la luz de petróleo, y el segundo dijo que todas las luces se apagaron. Por consiguiente, a nuestro juicio, los testigos de la parte protestante merecen mayor crédito; de todas maneras, habiéndose probado las irregularidades alegadas en la protesta y siguiendo la teoría sostenida en el caso de *Hontiveros vs. Altavas*, 24 P. R. 632-648, citado en el libro 'The Revised Election Code, Annotated and Commented' por Francisco, página 304, que dice:

"The law does not require a *prima facie* showing, other than the allegations in the protest, of fraud or irregularities in order to authorize the opening of the ballot boxes."

"El Juzgado ordena que se abran las urnas del Precinto Electoral No. 15 del municipio de Cuyapo, usadas en las elecciones del 11 de Noviembre, 1947."

On the same date, the trial court also entered the following order:

"El Juzgado, con vista de la Sección 177, del Art. 12 del Código Electoral, que fija el tiempo dentro del cual se debe decidir una protesta y nada dice en cuanto a cualquier recurso que las partes quieran ejercitar en defensa de sus respectivos intereses, y a petición de la representación de la parte protestada,

"Se concede a ésta 15 días de plazo para presentar cualquier recurso que crea conveniente contra el auto de este Juzgado de esta fecha, Febrero 5, 1948, a contar desde que los taquígrafos pongan por correo certificado las copias de sus transcripciones dirigidas a los interesados, a menos que las partes, por adelantado, recojan personalmente las mismas. Todo el tiempo transcurrido desde mañana hasta que termine definitivamente el recurso anunciado será deducido del tiempo fijado por la ley para la decisión por el Juzgado de esta protesta.

"Así se ordena."

And pursuant to the last order, the protestee did file a *certiorari* proceedings with the Supreme Court which was dismissed on the ground that an appeal and not *certiorari* was the proper remedy against the order of February 5, 1948, denying the motion for dismissal. On February 25, 1948, the protestee filed a motion for reconsideration of the order of February 5, 1948, denying his motion for dismissal, but said motion for reconsideration was overruled on March 3, 1948.

To carry out the opening of the ballot boxes of Precinct No. 15 and the revision of its ballots in accordance with the order of February 5, 1948, the trial court appointed the corresponding Commissioners who, after taking oath, complied with their duties and rendered their reports (Exhibits MM and NN), wherein they stated that they opened the white box for Precinct No. 15 and found inside three bun-

dles of official ballots (Exhibits F, G and H), which were carefully examined by them and from which examination they found the following: From bundle Exhibit F, composed of 100 ballots, there were:

- "81 votes cast for Juan Sumalbag
- 4 votes cast for Teodoro Jose
- 8 votes cast for Tomas Corpuz
- 3 votes cast for Benigno Divina
- 3 blank vote
- 1 ballot-ineligible and marked as Exhibit F-17"

From bundle Exhibit G, they found the following:

- "70 votes cast for Juan Sumalbag
- 5 votes cast for Teodoro Jose
- 16 votes cast for Tomas Corpuz
- 3 votes cast for Benigno Divina
- 1 vote cast for Jose Garcia
- 1 vote cast for Fabian Sandoval
- 1 blank vote
- 3 ballots claimed by Commissioner of the protestant"

And from bundle N, they found:

1. Juan Sumalbag	67
2. Teodoro Jose	8
3. Tomas Corpuz	6
4. Benigno Divina	0
5. Jose Garcia	1
6. Fabian Sandoval	1
7. Blank	1
<hr/>	
"Total	84"

During the revision of the ballots, no question was raised by the protestee about the appreciation of the ballots and accordingly the reports of the Commissioners do not mention any objection about said appreciation of the ballots.

After the revision of the ballots and the submission of the reports of the Commissioners, the case was set for hearing, and after trial, the court dismissed the protest on the ground that the protestant did not allege in his motion and neither has substantiated during the trial the number of votes he received in the other nineteen uncontested electoral precincts of Cuyapo, and for this reason the trial court has no basis to determine the total number of votes the protestant has received in the twenty electoral precincts in said municipality. In the decision, the lower court states that out of the 218 votes found by the Commissioners in favor of the protestant, at least 177 are unquestionably valid votes in favor of the said protestant, but since the latter failed to prove the number of votes received by him in the other nineteen electoral precincts in Cuyapo, there is no basis for determining his total number of votes in the twenty electoral precincts of Cuyapo and for declaring that he polled more votes than the protestee.

Not satisfied with this decision, the protestant perfected his appeal and in this instance claims that the lower court erred:

"1. In excluding Exhibits E and E-1 as part of the evidence of the protestant because they are neither a primary or secondary evidence.

"2. In concluding that the protestant is entitled only for 177 valid votes in his favor in Precinct No. 15 of Cuyapo, Nueva Ecija."

The protestee did not appeal from the decision but pursuant to the doctrine laid down by the Supreme Court in the case of *Mendoza vs. Mendiola* (53 Phil., 270), to the effect that notwithstanding the contestee's failure to appeal from the judgment of the lower court, the contestee may make assignment of errors in an election contest, the protestee herein in his brief also makes the following assignment of errors:

"I. In denying appellee's motion to dismiss the election protest predicated on his third special affirmative defense in that there being a failure of allegation as to the total number of votes obtained by the protestant and by the protestee, the election protest did not state facts sufficient to constitute an action.

"II. In holding and concluding that except for the robbery of the ballot boxes no irregularity was committed in Precinct No. 15 of Cuyapo; that there has been no fraud committed by anyone, nor has there been any irregularity by the election inspectors or watchers; and that the ballots have not been substituted, tampered with, or otherwise altered.

"III. In allowing the witnesses of the appellant to identify their ballots from those which were marked as Exhibits F-1 to F-100, G-1 to G-100, and H-1 to H-84 and thereafter permitted them to declare how they voted without proper and legal basis for their testimony.

"IV. In finding and concluding that the appellant obtained and be credited with 177 votes in Precinct No. 15.

"V. In not declaring and concluding that all the ballots and other election materials found in the white ballot box for valid ballots and those in the red box for invalid ballots, marked as Exhibits A and B respectively are all invalid and in not declaring and concluding that the election held in Precinct No. 15 on November 11, 1947 was null and void."

The undisputed facts resulting from the evidence of record as follows: In the elections of November 11, 1947, the appellant and the appellee were candidates for the Office of Mayor of Cuyapo, with certificates of candidacy duly filed within the time prescribed by law. For election purposes, that municipality was divided into twenty electoral precincts, and, except in Precinct No. 15, the elections were legally and orderly conducted. At about eight o'clock in the evening of November 11, 1947, before the inspectors of said Precinct No. 15 could commence the counting of the votes, a group of armed men went to that precinct, seized the ballots, placed them in the ballot boxes and carried them away, thus preventing the inspectors to count the votes, as well as to make the corresponding statement of the count. Shortly after the robbery, MP soldiers arrived at the polling place and the Board of Inspectors re-

ported the matter to said soldiers. Since then nothing was heard about the ballot boxes and the ballots, until the afternoon of November 25, 1947, when an eighteen year old boy, named Conrado Villanosa, accidentally found two ballot boxes submerged under water in a dam, in barrio Nagmisahan, where Precinct No. 15 was located, and reported his discovery to Telesforo Domingo, the barrio lieutenant, who in the following morning reported the matter to Tomas Corpuz, one of the candidates, then acting as Municipal Mayor, who, in turn, instructed the Chief of Police to fetch the ballot boxes. In the afternoon of November the 26th, the ballot boxes were then brought to the municipal building of Cuyapo, and Mayor Corpuz then sent a telegram to the Provincial Fiscal of Cabanatuan informing the latter of the recovery of the ballot boxes. On the morning of November 27, 1947, the Provincial Fiscal constituted himself at the municipality of Cuyapo and ordered the opening of the ballot boxes by sawing off the hooks of the padlocks of both boxes, which was done in the presence of some of the inspectors and candidates for Mayor, the protestee being then represented by his brother, Ernesto Jose. After the opening of the boxes, the Provincial Fiscal ordered that their contents be taken out and separated, and thus from the contents of the white box eighteen bundles were formed, which afterwards were carefully placed again inside the said white box and carefully closed with three new padlocks. Once closed, the ballot boxes were kept under the care of the Provincial Fiscal until the court ordered their delivery to the Commissioners for the revision and examination of the ballots contained therein. At the trial of the case, three of said eighteen bundles were offered in evidence as Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84. They were the ballots cast by the electors in said precincts, which the Commissioners had revised and counted and about which said Commissioners rendered their reports Exhibits MM and NN, mentioned above.

During the trial of the case, the genuineness of the ballots marked Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84 was fully established. In this connection, the trial court found:

“* * * Durante la vista se probó mediante el testimonio de Isayas Dimalanta que las balotas usadas en el Precinto No. 15 del municipio de Cuyapo durante la elección del 11 de Noviembre de 1947 son genuinas, impresas por el Bureau of Printing del Gobierno de la República de Filipinas; que durante el testimonio de este testigo se probó que dichas balotas eran las enviadas por dicha oficina, Bureau of Printing, al Tesorero Provincial de Nueva Ecija mediante los Exhibitos CC, CC-1, DD que forman un solo legajo, con los cuales tienen relación los Exhibits GG, GG-1, GG-2, GG-3, GG-4, GG-5, JJ, JJ-1, JJ-2, JJ-3, JJ-4, JJ-5, JJ-6, y finalmente dicho testigo Isayas Dimalanta, para asegurar al Juzgado y a las partes de lo genuino que son las balotas encontradas en la urna blanca del precinto electoral No. 15 de Cuyapo, después ya de robadas, llamó la atención del Juz-

gado y de las partes sobre ciertos secretos que contienen dichas balotas que refuerzan su convicción de que las mismas son genuinas, y para convencer, a su vez al Juzgado y a las partes de esta afirmación, dijo que uno de esos secretos era el tener desaparecidas las líneas que conectan los dos extremos del lazo que está debajo del escudo, mientras que en dicho escudo, pintado con todos los requisitos oficiales, siempre aparece dicha línea, el cual secreto, realmente, existe en las balotas usadas en la elección en el precinto No. 15 de Cuyapo, el 11 de Noviembre de 1947 en las cuales no constan dichas líneas; que el otro secreto consiste en que está cortado el rabillo en la punta de abajo de la letra 'y' en la palabra 'secretly' de la frase 'Fill out the ballot secretly inside the booth', mientras que dicho rabillo aparece en las otras 'y', siempre que aparece en el cuerpo de la balota; y el tercer secreto consiste, según el mismo testigo, en que las líneas '1' al '8' correspondientes a concejales tienen pequeñas insensibles sinuosidades; el Juzgado y las partes han observado estos tres secretos, los han visto confirmados, así es que no hay duda alguna de que las balotas encontradas en la urna blanca del precinto electoral No. 15 de Cuyapo después del robo usadas en la elección del 11 de Noviembre de 1947, son genuinas, oficiales e impresas. Otras pruebas de que las balotas encontradas en la urna blanca, eran las usadas por los electores durante la votación, consisten en los Exhibitos F-1-a, G-1-a y H-1-a que eran los envoltorios de dichas balotas, identificados por el inspector de elección, Filemon Cariño;

* * * * *

"* * * Los distintivos del presente caso consisten en:

"(a) Que no había terminado definitivamente la elección del 11 de Noviembre de 1947, en el precinto No. 15 de Cuyapo, porque los inspectores de elección no han comenzado siquiera a leer las balotas, y menos calificarles si eran legales o no; (por marcadas, etc.);

"(b) Que no existe acta de actuación alguna ya realizada por la junta de inspectores de elección en dicho precinto, en dicho día, ni siquiera de los actos ya terminados o realizados antes de las 8 de la noche de dicho día;

"(c) Que dichos inspectores no eran los que pusieron los papeles en la urna blanca, sino la gente armada;

"(d) Que una vez encontradas las urnas, el Fiscal Provincial, creyéndose autorizado, mando aserrar los únicos candados, entonces cerrados bajo llave, de las dos urnas con el fin de ver el contenido de las mismas;

"(e) Que los objetos encontrados en las urnas son los mismos exhibitos identificados durante la vista de esta causa;

"(f) Que entre estos Exhibitos están los Exhibitos F-1 al F-100, G-1 al G-100, H-1 al H-84, que, según prueba competente y autorizada—del oficial del Bureau of Printing—dichas balotas son genuinas y oficiales, impresas por dicho Buró expresamente para el municipio de Cuyapo para la elección del 11 de Noviembre de 1947;

"(g) Que estas balotas, declaradas así genuinas y oficiales y que fueron las enviadas por el Bureau of Printing al Tesorero Provincial, eran las usadas en la elección antedicha, en el antedicho precinto del municipio de Cuyapo. Casi todas estas balotas han sido identificadas por muchos electores que declararon durante la vista, reconociéndolas como suyas;

"(h) No hay irregularidad cometida ni probada durante la vista, ni por electores, ni por inspectores de elección; ni por 'watchers';

"(i) No hay prueba de fraude alguno cometido por alguna parte. Tampoco hay prueba de que las balotas han sido sustituidas, manipuladas o alteradas. Se puede decir que con excepción del robo de las urnas de autos y la falta de lectura de las balotas para decidir la adjudicación de ellas a los candidatos votados en las mismas, no ha habido irregularidad alguno."

And due to the fact that the election in Precinct No. 15 of Cuyapo was conducted legally and the genuineness of the ballots Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84 was duly proven in its decision, the lower court made a pronouncement to the effect that in said precinct the protestee received 17 votes and that at least 177 votes out of the 218 votes found by the Commissioners as valid votes in favor of the protestant, should be credited to the latter; and if Exhibits E-1 and E-2, the certificates issued by the Municipal Treasurer of Cuyapo about the votes received by the protestant and the protestee, be given due weight, it would appear that in all the precincts of that municipality, excepting Precinct No. 15, the protestee had received 1,255 votes and the protestant 1,117 votes; and if to the protestee's 1,255 votes, 17 votes more will be added and to the protestant's 1,117 votes, 177 votes more will likewise be added, the inevitable result would be that the protestant should be credited with 1,294 votes and the protestee with 1,272 votes, thus resulting in favor of the protestant a plurality of 22 votes which entitles him to be declared elected. The lower court failed so to do and instead dismissed the motion protest, hence the protestant had to appeal to this Court.

Upon the facts above stated and the assignment of errors quoted above, we find that the controversy between the appellant and the appellee may be reduced to the following questions: (1) Are Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84 valid and legal votes which could be adjudicated by the trial court in favor of the persons voted therein? (2) Was there fraud, supplantation, irregularity and tampering of said ballots which might make them illegal and invalid votes, or at least not genuine in contemplation of the law and jurisprudence as alleged by the protestee? (3) Has the court jurisdiction to make such adjudication there being no electoral returns or statement of votes duly issued by the Board of Inspectors of Precinct No. 15? (4) Was the lower court justified in dismissing the motion protest having in view the evidence of record?

With regards to the first and second questions, which can be discussed jointly, we find that the genuineness, legality and validity of Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84 are beyond dispute. The evidence of record, specially the testimonies of the Provincial Fiscal, the election inspectors, Conrado Villanosa, Isaias Dimalanta and the voters who identified their ballots, convincingly show that the ballots in question are the same ballots prepared by the electors of Precinct No. 15 during the elections of November 11, 1947. And while it is a fact that these ballots were stolen by a group of armed men and thrown to the river where they were later found by Conrado Villanosa, there is no scintilla of evidence to cast even the

suspicion that said ballots were supplanted or tampered with. True it is that in the lower court, as well as in this Court, the protestee has vigorously contended that these ballots *might* have been tampered by the protestant, and for that reason they should not be given due weight and consideration, but the fact remains that the protestee has failed to demonstrate such tampering or supplantation, and consequently his unproven insinuation is no more than a conjecture which cannot be seriously entertained. Pleadings and allegations shall be shown; otherwise, they will not deserve Court's attention.

It is vigorously contended by the protestee that although there has been no direct evidence of substitution and manipulation of the contested ballots, the circumstances proven at the trial point in that direction. It is alleged that if certain persons were capable, in armed band, to rob the ballot boxes in question, it is not beyond the real possibility, not to say probability, that the same persons would be also capable of laying their hands on a number of unused ballots to supplant the ballots prepared by the voters in the contested precinct, and if to this fact is added the confusion of 186 witnesses in the selection of their ballots when they were allowed by the court to do so, the inevitable conclusion is that there was tampering or supplantation of the ballots. As to this contention, suffice it to say that the evidence of record completely refutes it, and although there has been some vacillation, not confusion, in said witnesses in selecting their ballots, that fact alone does not show that the contested ballots have been tampered or supplanted, for such vacillation may be attributed either to the fact that the voters were not skilled in handwriting or that the ballots were soaked in water and what was written therein somewhat blurred. It is an undisputed fact that during the revision of the ballots, the Commissioners were able to clearly separate the respective votes of the protestant and the protestee and the other candidates voted for therein, and that during that revision, the appreciation of said ballots by the Commissioners was not questioned by the protestee nor by his Commissioner. It is settled in this jurisdiction, by a long series of decisions of Our Supreme Court, that the ballots constitutes the best evidence of the vote unless the same has been substituted or altered in any manner after the election. In the case at bar, no tampering, supplantation or substitution of the ballots in question have been proven; hence, they should be given due value, even if the voters had any vacillation or confusion in the selection of their ballots. In passing, we hold the view that in the case at bar, there was no need for the court to admit the testimony of the voters to show the persons for whom they voted in Precinct No. 15, for the ballots in question are the best evidence of

their votes and their testimonies, whatever they may be, cannot go against the ballots.

It is likewise insinuated by the protestee in his brief that the robbery of said ballots and ballot boxes was intended to achieve a definite object, to wit: the substitution or supplantation of the ballots, which, according to the protestee, is an open practice of the people of the municipality of Cuyapo. This insinuation has no basis at all as against the protestant. The record shows that Precinct No. 15 was the bulwark of the protestant and that his candidacy was strong in the region in which said precinct was established. This being the case, he would not be foolish enough to plan the robbery of the ballots which, if counted, would give him a big majority, as was shown when the ballots were examined by the Commissioners. If therefore the candidacy of the protestant in said precinct was very strong, we could hardly conceive that he would plan the robbery of the ballots in question and thus imperil his triumph, as it was imperilled when the Board of Municipal Canvassers failed to take into consideration the votes cast in said precincts due to the robbery of said ballots and to the failure of the inspectors to make the corresponding statement of the count of votes, and to deliver them to the proper authorities. Moreover, if there is one that would steal the ballot boxes and ballots in question, that person should be the one that might be seriously affected by the result of the election in said precinct; and certainly, that one cannot be the herein protestant. Moreover, if the purpose of the robbers of the ballots was to devise a scheme to supplant the ballots and augment the votes cast in favor of the protestant, they would not have thrown the ballot boxes into the river and would have sought a means of returning the ballots in time for the counting, which was not the case, aside from the fact that the evidence on record does not indicate that the protestant had anything to do with the finding of the ballot boxes and their contents.

With regard to the third question, to wit: whether the Court has jurisdiction to adjudicate the ballots cast in Precinct No. 15 in favor of the persons voted for therein, we hold that the lower court is vested with such jurisdiction. It is contended that there being no counting made of said ballots by the Board of Inspectors, nor any statement of said Board of the result of the counting which was not made, the lower court cannot make an *original* counting and adjudicate the votes resulting therefrom to the persons voted for therein. This contention is untenable. In the case of *Sagcal vs. Gallardo*, CA-G. R. No. 3398-R, promulgated on December 22, 1948, a similar question was raised, and our ruling in that case is also applicable to the case at bar. In that case, the ballots, the ballot boxes and other election paraphernalia were collected by the representative

of the Municipal Treasurer of Candaba before the Board of Inspectors of the several precincts involved had commenced or when they had just begun to count the ballots, thus preventing them from making a counting of the votes and from preparing a statement of the result of the counting. In the case at bar, the ballots, as well as the ballot boxes and other documents were carried away by a group of armed men before the counting of the votes, and, consequently, no statement of the counting was made by the Board of Inspectors. The similarity of the situation in the two cases seems to be apparent and the applicability to the case at bar of the ruling in the case of *Sagcal vs. Gallardo*, is in order. We then had the following to say:

"It is however contended that because there has been no counting by the Board of Inspectors of the contested precincts, nor by the Municipal Board of Canvassers, the Court has no authority to count said ballots and adjudicate them in favor of the protestant. In this connection, it should be stated that if the Board of Inspectors of said precincts were not able to canvass said ballots and prepare the returns of their canvassing, it was because said ballots and ballot boxes were collected by Pablo M. Reyes, Representative of the municipal treasurer of Candaba, together with Major Vargas, before said Board of Inspectors could make the canvass. In turn, when the Municipal Board of Canvassers made the canvassing for the purpose of determining who between the protestee and the protestant had the majority of votes in all the electoral precincts of Candaba, said Board could not take into consideration any return concerning said ballots because no return thereof were prepared by the Board of Inspectors of said precincts, for the reasons above stated, and because of these facts, it is now claimed by the protestee that there having been no first counting of said ballots, nor return thereof, by the Board of Inspectors of the contested precincts, the lower court could not have jurisdiction over said ballot boxes and ballots because the Court of First Instance could only have the ballots examined and votes recounted if there had been an original count made by the Board of Election Inspectors.

"This contention is untenable. Pursuant to section 175 of the Revised Election Code, the Court of First Instance is empowered to make a judicial counting of votes in contested elections, and although in said section it is provided that upon the petition of any interested party, or *motu proprio*, the court shall immediately order that the ballot boxes be examined and the votes recounted, the use of the verb '*recount*' can be considered merely as a legal nicety used, because in the greater majority of the cases, a count was made and hence the judicial count could properly be termed only a *recount*, but that word was clearly not used as a qualifying or prescriptive term so as to require previous count for the court to make its own counting.

"In the case of *Aquino vs. Calabis and Sehagun*, 55 Phil., 954. it was held that the purpose of an election contest is to correct the canvass of which the proclamation is a public manifestation, and the power granted by law to the courts must agree with and be adequate to such purpose. It was likewise stated in the same case that before the late amendments to the law, courts could only order the Board of Canvassers to correct the canvass; but that now the court may, without further canvassing by the Board, directly declare which candidate is elected leaving the canvassing made by the Board null and void, and the candidate so declared elected may assume possession of office upon proper notice of final indorsement.

"Section 175 of the Revised Election Code, referring to judicial counting of votes in contested elections, may at first glance seem to govern only in cases where there has been a previous count and canvass made, but on further analysis and reasoning we are inclined to hold that in the case at bar the court may proceed to count the ballots in question. There is authority to the effect that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. (*Hayfrom vs. Mahoney*, 18 Am. St. Reps. 757, 763; *McCrary on Elections*, 3rd Ed., Sec. 396.) *Galang vs. Miranda*, 35 Phil., 269. It is also well settled that once the ballot boxes pertaining to a certain precinct are opened, it is the duty of the court to examine all the ballots in order to determine their legality or illegality even when neither of the parties has raised any question thereon. Thus, in the case of *Olano vs. Tibayan*, 53 Phil., 168, 171, it was held that the fact that neither of the parties had raised the question of the illegality of the said ballots, either at the trial or in their pleadings, does not deprive the trial court of jurisdiction to examine them. (To the same effect, see also *Yalung vs. Atienza*, 52 Phil., 781.) Again, in the case of *Cecilio vs. Tomacruz*, 62 Phil., 689, 700, the court stated that it had held in several cases that election contests submitted to the court affect the public interest and that when the ballot boxes are opened by order of the court taking cognizance thereof, it is the latter's duty to examine all their contents and to adjudicate the valid votes found therein to either one of the candidates, and that the reason for this rule is that in such cases the primary aim must be to carry out the will of the electorate as expressed in the ballots.

"It is the vote of the people and not the return of the officers that makes an election. (20 C. J., p. 193, Elections sec. 245.)

'The right to an office, dependent on an election by the people, is to be determined by the number of legal votes received at the election, and not by the certificate of election, nor by the governor's commission.'

'Recourse may be had to the ballots themselves in order to ascertain how the electors actually voted, for it is well settled that in an election contest the ballots themselves constitute the highest and best evidence of the will of the electors provided they have been duly preserved and protected from unauthorized meddling or tampering. One who relies upon overcoming the *prima facie* correctness of the official canvass by a resort to ballots, however, must first show that the ballots as presented to the court are intact and genuine, for as against ballots not properly kept and identity of which is not shown, the official canvass, though secondary, is the best evidence.' (18 Am. Jur., 377, 378.)

"If the primary aim in an election contest is to carry out the will of the electorate as expressed in the ballots and that recourse to the ballots themselves may be had in order to ascertain how the electors actually voted, and considering that in the case at bar the ballots in question are proven to be genuine, we hold that the trial court had jurisdiction to order the counting of said ballots and adjudicate them in favor of the candidates voted for therein."

From the foregoing, it clearly appears that the lower court had jurisdiction to adjudicate, and should have adjudicated to the protestant, the votes found by the Commissioners during the revision of the ballots in question.

With reference to the fourth question, to wit: whether the judgment for dismissal of the case at bar is, or is not, justified, we note that the appellant failed to make any

specific assignment of error regarding said dismissal. However, since such question is quite involved in his two assignment of errors, and considering that in an election contest the trial court, as well as the appellate court, is in duty bound to determine who has been elected, we are of the opinion that even without a specific assignment of error relative to the dismissal of the case, this Court is competent to pass upon such dismissal for the purpose of determining who has been elected in the case at bar. The courts are loath to disenfranchise innocent voters. In the present case, to reject the ballots of Precinct No. 15 would amount to disenfranchise the voters thereof. Since the legality of the votes in said precinct is indisputable and the ballots cast by the voters (Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84), were shown to be genuine and valid, said ballots should not be thrown away on mere technical grounds. In his protest, the protestant alleged that he was a candidate for the office of Mayor of Cuyapo with certificate of candidacy duly filed and that the protestee was proclaimed by the Board of Canvassers of Cuyapo as elected for the office of Mayor of said municipality, although he failed to allege the number of votes he received. It is now contended by the protestee that because of protestant's failure to aver the number of votes he had received in the other nineteen uncontested electoral precincts, he cannot prove this fact. We find this contentions to be untenable. In his protest, the protestant prayed that he be declared elected and that the proclamation of the protestee be nullified. If in the present case, only because of protestant's failure to allege the number of votes he received in the uncontested precincts, We were to reject all evidence tending to establish the number of votes he received therein, we would certainly deprive him of the right of laying the foundation to secure the relief he prayed for in his protest.

Section 174 of the Revised Election Code provides that the only jurisdictional facts that should be alleged in the motion protest are: (a) that the protestant is a candidate voted for in said election and has presented a certificate of candidacy; (b) that the protestee has been proclaimed in said election; and (c) the date when the proclamation of the result of the election was made so that it may be seen that the protest was filed within the term fixed by the law, that is, within two weeks after the proclamation of the result of the election. All these jurisdictional facts were alleged in the motion protest, hence the trial court had jurisdiction over the point in question. It is settled that after the jurisdictional facts have been established and the election protest submitted to a court, it is its bounden duty to decide it and to declare who has been elected in the contested election. As could be readily seen from the provision of section 177 of the Revised Election Code, it is our con-

sidered opinion that, notwithstanding the failure of the protestant to allege in his protest the number of votes he had received in the uncontested precincts, he can prove that fact in order to establish that he was the one legally elected and should have been proclaimed in lieu of the protestee. In the case at bar, the protestant offered in evidence Exhibit E, which is as follows:

"REPUBLIC OF THE PHILIPPINES
MUNICIPALITY OF CUYAPO
NUEVA ECIJA

OFFICE OF THE TREASURER

"December 1, 1947

"TO WHOM IT MAY CONCERN:

"This is to certify that the following candidates for Mayor in connection with the election held on November 11, 1947, the following votes obtained by each candidate are herewith attached:

"Please note that there is no vote obtained in Precinct No. 15, because the ballot box was seized by unknown persons during the night of the election at about 8:30 p.m.

"It is hereby certified also that Mayor-elect Teodoro Jose has two more votes not yet included in the above number of votes (1,255) because the council had not yet met to consider the votes of Dr. Sotero Falcon and his wife, Concordia Gregorio Falcon who are temporarily residing at Olongapo, Zambales, pursuant to sections 16 and 17 of the Revised Election Code.

"(Sgd.) G. MAÑGAOANG
"Municipal Treasurer"

He also offered in evidence Exhibit E-1, which is as follows:

"NAME OF CANDIDATES

Precinct No.	Corpus	Jose	Su- malbag	San- doval	Garcia	Divina
1	52	69	16	8	7	6
2	67	56	39	23	28	6
3	31	75	69	6	7	4
4	57	98	7	8	12	4
5	48	70	27	10	17	6
6	71	58	14	8	3	1
7	61	77	77	13	39	11
8	46	104	74	18	15	14
9	30	27	156	3	8	18
10	45	116	72	21	6	6
11	53	44	109	8	4	12
12	51	12	66	15	2	3
13	98	48	28	3	3	1
14	41	51	78	0	2	9
15						
16	28	190	32	7	0	1
17	46	42	50	15	0	6
18	27	4	34	2	4	1
19	19	6	103	2	2	7
20	13	8	66	1	6	2
Total	884	1,255	1,117	201	165	118

when these exhibits were offered in evidence for the first time at the hearing of January 29, 1948, the protestee made the following objections:

"* * * We object to Exhibits 'E, E-1 and E-2', because they set to prove what is already admitted and a fact already admitted need not be proved. If the purpose of the contestant in introducing Exhibits E and E-1 is to cure the allegations, we object to this as being incompetent." (t. s. n., p. 130, January 29, 1948.)

Then the court ruled as follows:

"COURT:

"All exhibits admitted.

"Atty. PERALTA:

"Exception." (T. s. n., p. 131, January 29, 1948.)

On May 20, 1948, when said exhibits were formally offered in evidence, the protestee made of record his objections the next day to said Exhibits E and E-1 in the following language:

"We strenuously object to Exhibit E and Exhibit E-1, the first being a certification of the Municipal Treasurer of Cuyapo as to the result of the election in Cuyapo on November 11, 1947.

"We likewise object to the admission of Exhibit E-1 and tabulation of the result of the election on the ground that they are irrelevant and immaterial, there being no allegation in the protest with regards to the number of votes obtained by the candidates in the election of November 11, 1947.

"No objection to Exhibit E-2." (T. s. n., p. 446-447, May 21, 1948.)

And the court then ruled:

"COURT:

"All Exhibits admitted for whatever they are worth.

"Atty. PERALTA:

"Exception with regards to those exhibits objected to." (T. s. n., p. 454, May 21, 1948.)

Therefore, Exhibits E and E-1 were admitted by the court. However, when the court decided the protest on its merits, the court dismissed the case on the ground that said exhibits are not the best or sufficient evidence to establish the number of votes of the protestant in the other nineteen precincts to which it could be added the votes he had polled in Precinct No. 15.

Exhibits E and E-1 partake of the nature of official and public documents for they were issued by the Municipal Treasurer of Cuyapo, as a public officer, who had under his control and possession the statement of the counting of the votes in the other nineteen precincts of Cuyapo. In these Exhibits E and E-1, he certifies the number of votes the protestant and the protestee had received in said nineteen precincts. In fact the number of votes, to be more exact 1,255 votes, mentioned by the Municipal Canvassers in the proclamation, Exhibit E-2, is the total number of votes mentioned by the Municipal Treasurer in his certificate Exhibit E and E-1. These exhibits are, therefore, at least

prima facie evidence of the number of votes the protestant and the protestee received in the uncontested nineteen precincts, and as such they are sufficient evidence in law to establish such number of votes, to which the trial court could have added the number of votes said protestant and protestee received in the questioned Precinct No. 15. According to the ballots the protestant had received in Precinct No. 15, 218 votes, which should be credited in his favor, and which should be added to the number of votes he received in the other nineteen precincts amounting to 1,117 votes, as shown by Exhibits E and E-1. The trial court could not legally disregard the probative value of the ballots, as well as the probative value of Exhibits E and E-1 after they were admitted, and dismiss the protest on a technical ground. Exhibits E and E-1, coupled with the testimony of Alejo Corpuz, convincingly and satisfactorily show the number of votes received by the protestant in the other nineteen uncontested precincts. Said witness testified as follows:

"Q. Showing to you this document which is already marked as Exhibit E in this case, do you know who signed this document?—A. Yes, sir.

"Q. Who?—A. The Municipal Treasurer of Cuyapo, sir.

"Q. Who prepared this document Exhibit E?—A. It was he, sir.

"Q. In typewritten form, who made that?—A. I, sir.

"Q. Why do you know that that letter was typewritten by you?—A. Because the Municipal Treasurer dictated me this letter and I typed it.

"Q. Why do you know that you were the one who typed it?—A. Because I have an initial below his name.

"Q. Showing to you this document which is already marked Exhibit E-1, who prepared this document?—A. I, sir.

"Q. The numbers from 1 to 20 appearing on the top of this document, what do they represent?—A. They represent the number of precincts.

"Q. Precincts of what?—A. Cuyapo, Nueva Ecija, sir.

"Q. What does the number appearing below each precinct appearing in this Exhibit E-1 represent?—A. It represents the number of votes polled by each candidate in each precinct.

"Q. Where did you take all the data appearing in this Exhibit E-1?—A. From the election returns from the Board of Election Inspectors.

"Q. For what election?—A. The election on November 11, 1947." (T. s. n., pp. 187-189, May 17, 1948.)

From the foregoing testimony of Alejo Corpuz, it clearly appears that the number of votes appearing in Exhibit E-1 was taken from the election returns of the election inspectors in all the uncontested precincts of Cuyapo, and if to this fact we add that in Exhibit E, the Municipal Treasurer of Cuyapo certifies to the correctness of what is stated in Exhibit E-1, the conclusion is inescapable that the votes of the protestant and the protestee appearing in Exhibit E-1 are unquestionable. Moreover, the testimony of Alejo Corpuz was not impugned nor refuted by any other evidence

of record, and although the Municipal Treasurer was not presented to testify on Exhibit E, the latter document, having been issued by a public officer, should be considered as a public and official document, and cannot be easily disregarded as the lower court did. And, there being in the record sufficient evidence to establish the number of votes of the protestant and the protestee in the uncontested electoral precincts of Cuyapo, to which the number of votes they received in Precinct No. 15 could be added, it is safe to conclude that the dismissal of the case by the lower court was a reversible error that shall be remedied. Courts of justice shall not dispose of cases on technical grounds, and particularly in election cases the courts must not lay down any ruling which might defeat the will of the people. Whenever possible, the judgment shall tend to uphold the free expression of the will of the majority of the electorate, and to that end the provisions of law are to be liberally construed.

In the decision appealed from, we find the following:

RESUMIENDO—

“A—En el Exhíbito E-1 se hace el siguiente computo de número de votos obtenidos por cada candidato a Alcalde Municipal de Cuyapo en la elección del 11 de Noviembre de 1947 en los otros precintos de dicho municipio, o con exclusión del precinto No. 15 del mismo:

“1. Tomas D. Corpuz	884,
2. Teodoro Jose	1,255,
3. Juan Sumalbag	1,117,
4. Fabian Sandoval	201,
5. Jose Garcia	165, y
6. Benigno Divina	118.

“B—La Junta de Escrutadores nombrados por el Juzgado, en sus informes, en relación con el resultado de sus escrutinios, de los votos emitidos en el Precinto Electoral No. 15 de Cuyapo exclusivamente, en la elección del 11 de Noviembre de 1947, ha llegado a adjudicar dichos votos de la manera siguiente:

“CANDIDATOS	Balotas		
	F-1 a F-100;	G-1 a G-100;	H-1 a H-84
1. Juan Sumalbag	81	70	67
2. Teodoro Jose	4	5	8
3. Tomas Corpuz	8	16	6
4. Benigno Divina	3	5	0
5. Jose Garcia	0	1	1
6. Fabian Sandoval	0	1	1

Total—

“para Juan Sumalbag	218,
para Teodoro Jose	17,
para Tomas Corpuz	30,
para Benigno Divina	8,
para Jose Garcia	2 y
para Fabian Sandoval	2.

“C—El Consejo Municipal de Cuyapo, actuando de Junta Municipal de Escrutinio, de acuerdo con la ley, según el Exhíbito E-2 proclamo

al protestado Teodoro Jose votado con mil doscientos cincuenta y cinco votos para Alcalde Municipal de Cuyapo, elegido como tal en las elecciones generales del 11 de Noviembre de 1947 en el Municipio de Cuyapo, Provincia de Nueva Ecija, Filipinas.

"D—El Juzgado, después de oír las pruebas de ambas partes, en relación con las elecciones llevadas a cabo en el Precinto Electoral No. 15 del Municipio de Cuyapo, el 11 de Noviembre de 1947, hace, a su vez, las siguientes adjudicaciones:

"A JUAN SUMALBAG

"(a) Como el votado en las balotas identificadas por los electores que testificaron	110 votos
"(b) Como el votado por los electores que, no habiendo podido identificar sus balotas, revelaron que votaron a Juan para Alcalde Municipal de Cuyapo en la elección del 11 de Noviembre, 1947, en el Precinto No. 15 del mismo municipio	67 votos
"Total	177 votos
"(c) Tomas Corpuz	1 voto"

From the foregoing, it can be seen that of the number of votes cast in Precinct No. 15, the lower court adjudicated only 177 valid votes in favor of the protestant, instead of 218 votes, as reported by the Commissioners, and if this number of votes is added to those that the protestant received in the uncontested precincts, amounting to 1,117 votes, the total number of votes of the protestant will be 1,294 votes. Out of the votes in Precinct No. 15, the lower court adjudicated in favor of the protestee, Teodoro Jose, 17 votes and if this votes are added to his other votes in the other precincts, amounting to 1,255 votes, his total number of votes will be 1,272 votes. Were we to follow, therefore, the appreciation made by the lower court of the number of votes that the protestant and the protestee had received in Precinct No. 15, the plurality obtained by the protestant would be 22 votes. But from the evidence on record, we find that from Exhibit E and E-1, the protestant has received 1,117 votes and the protestee 1,255 votes; and from ballots Exhibits F-1 to F-100, G-1 to G-100 and H-1 to H-84, the protestee obtained in Precinct No. 15, 17 valid votes and the protestant received not only 117 votes, as found by the trial court, but 218 votes. Now, if 17 votes from Precinct No. 15 are added to 1,255 votes that the protestee received in the nineteen uncontested precincts, his total number of votes is 1,272 votes; and if the 218 votes cast in Precinct No. 15 in favor of the protestant are added to his 1,117 votes in the uncontested precincts, his total number of votes will be 1,335 votes, thus resulting in a plurality of 63 votes in his favor. Anyway, whether the plurality obtained by the protestant be 63 or 22 votes only, he is unquestionably entitled to be declared as elected Mayor of the municipality of Cuyapo, Nueva Ecija.

In view of all the foregoing, the decision appealed from is hereby reversed and the protestant Juan Sumalbag declared elected Mayor of Cuyapo in the last general elections of November 11, 1947. The protestee shall pay the costs in both instances.

Let copies of this decision be furnished the Commission on Elections, the Provincial Board of Nueva Ecija and the Municipal Council of Cuyapo, Nueva Ecija. It is so ordered.

Torres, Pres. J., and Felix, J., concur.

Judgment reversed.

[No. 3062-R. January 15, 1949]

RAYMUNDO MENDIOLA ET AL., petitioner, *vs.* Hon. POTENCIANO PECSON, Judge, Court of First Instance of Bulacan, Branch II, CLEOTILDE MENDIOLA and JUAN CASTOR, respondents.

PLEADING AND PRACTICE; RECORD ON APPEAL; MANDAMUS LIES WHERE JUDGE UNJUSTLY DISALLOWS RECORD ON APPEAL.—The thirty days period within which the Record on Appeal should be filed should be counted from the date when the attorneys on record or the party they represent has actually received notice of the decision. Since in the instant case, the attorneys of the plaintiffs failed to receive the copies of the decision sent to them by registered mail and special delivery, without negligence on their part, the Record on Appeal filed within 30 days from receipt of said decision by the plaintiffs—petitioners is in order. The respondent judge having without justification disallowed the Record on Appeal in question, the petition for mandamus is granted.

ORIGINAL ACTION in the Court of Appeals. Mandamus.

The facts are stated in the opinion of the court.

Anatolio G. Alcoba for petitioners.

Bustos & Bustos for respondents Mendiola and Castro.

Respondent Judge in his own behalf.

ENDENCIA, J.:

This is an original action instituted by the petitioners for the purpose of securing an order to compel the respondent Judge to allow and certify to this Court the Record on Appeal filed in civil case No. 142 of the Court of First Instance of Bulacan, entitled: "Raymundo Mendiola *et al.*, versus Cleotilde Mendiola *et al.*"

It appears that the respondent Judge was presiding the second branch of that court where the aforementioned civil case was tried. Said case was decided on March 19, 1948, and on the 23rd of said month, the Clerk of Court sent copies of the decision by special delivery and registered mail to plaintiffs and petitioners' counsel, namely,

Atty. Carlos Perfecto, 455 Elias St., Manila, and Atty. Anatolio G. Alcoba, R-304 Chaco Building, Manila. The copies sent were not received. The envelope of the letter sent to Atty. Carlos Perfecto was returned to the Clerk of Court with the following notations: "Moved to unknown address" and the dates "3-25-48", and "3-26-48", which evidently shows that the letter carrier attempted to deliver said letter to the attorney but failed. The envelope of the letter sent to Atty. Anatolio G. Alcoba was likewise returned to the Clerk of Court with the following remarks: "No longer at" and the dates "3-27-48" and "3-29-48", showing that the letter carrier also attempted to deliver said letter to the addressee without success.

On April 26, 1948, said letters were returned by the Post Office of Manila to the Clerk of Court and on the envelopes thereof there appears the following: "Unclaimed" and "Returned to sender".

On May 14, 1948, a copy of the decision was, by order of the court, forwarded to one of the plaintiffs, Raymundo Mendiola, and Attorney Alcoba, on behalf of the plaintiffs, filed a notice of appeal on May 20, 1948 and the Record on Appeal and the Appeal Bond on May 28, 1948.

After hearing and due to the opposition filed by the defendants-respondents, on the ground that the Record on Appeal had been filed out of time, said Record on Appeal was disallowed by the respondent Judge, who issued the following order:

"ORDER

"The question before the Court is whether or not the record on appeal should be allowed.

"It appears that the decision was rendered on March 19, 1948; that on March 23, 1948, the Deputy Clerk of Court sent copies of the decision by registered and special delivery mail to Atty. Carlos Perfecto, 455 Elias St., Manila, who are the counsels of the plaintiffs; that said letters were not claimed by said attorneys from the Post Office at Manila from March 24, 1948 when they were received at said Post Office until April 26, 1948 when they were returned to the sender at Malolos, Bulacan, with the stamp on the respective envelopes 'UNCLAIMED,' and 'RETURNED TO SENDER'; that on May 14, 1948, a copy of the decision was forwarded to one of the plaintiffs, Raymundo Mendiola, by order of the court; and that Atty. Anatolio G. Alcoba for the plaintiffs filed his notice of appeal on May 20, 1948, and the record on appeal and the appeal bond on May 20, 1948.

"The defendants are opposing the approval of the said record on appeal on the ground that it has been filed out of time.

"The record further shows that Atty. Anatolio G. Alcoba, who is the leading counsel, indicated his postal address as 1144 Magdalena, Manila, in the complaint dated November 27, 1946. On January 28, 1947, when he wrote to the Clerk of Court, he gave his postal address as Raon 304 Goldenberg Bldg., 415 Dasmariñas, Manila. On August 20, 1947, he filed a motion and gave his postal address as R-304 Chaco Building, Manila. On November 17, 1947, he filed an amended complaint and his postal address was R-304 Chaco Building, Manila. And, to this last mentioned address the

copy of the decision was sent to him by registered and special delivery mail, but it was returned unclaimed as stated above.

"It appears, however, in his notice of appeal that his postal address at the present time is R-303 Cu Unjieng Building—310 Dasmariñas, Manila, instead of R-304 Chaco Building, Manila.

"Atty. Anatolio G. Alcoba must have been informed of the decision by his client Raymundo Mendiola to whom a copy was sent on May 14, 1948, by order of the Court.

"The truth of the matter is that when Atty. Anatolio G. Alcoba transferred his postal address from R-304 Chaco Building, Manila, to his present address at R-303 Cu Unjieng Building—310 Dasmariñas, Manila, he did not advise the Clerk of Court about it; neither he advised the Post Office of Manila of his change of address which is customarily done. The fact that the copy of the decision, which was sent to him by registered and special delivery mail, was 'returned to sender' 'unclaimed' must be attributed to his negligence in advising the Clerk of Court and the Postmaster at Manila of his change of address.

"On March 9, 1948, the minutes of the Clerk of Court shows that he has not changed his postal address; and ten days thereafter, that is, on March 19, 1948, the decision was promulgated. The Clerk of Court had to forward the copy of the decision to his last address as appearing of record. Atty. Alcoba must have transferred his office to his present address after March 9, 1948. However, it was his duty to advise the office of the Clerk of Court or the Postmaster of Manila of his change of address, which he failed to do.

"The said registered letter being at the same time special delivery, the mail carrier at Manila on March 27, 1948 and March 29, 1948, noted on the envelope, when he failed to deliver said letter 'no longer at'—meaning no longer at his given address. After thirty days, when said letter remained unclaimed from the Post Office at Manila, it was returned to the sender, the Clerk of Court, at Malolos, Bulacan.

"The purpose of the Court in ordering that a copy of the decision be sent directly to the plaintiff Raymundo Mendiola was for his information and guidance for whatever action he may take against his counsels for their failure to notify the Clerk of Court of their change of address and not for service, because service to the attorney is tantamount to service to the party.

"The legal question involved herein is governed by section 7 and 8 of Rule 27 of the Rules of Court.

'SEC. 7. *Service of final orders or judgment.*—Final orders or judgments shall be served either personally or by registered mail.

'SEC. 8. *Completeness of service.*—Personal service is complete upon actual delivery. Service by mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.

"Under the above quoted provision of the Rules, therefore, Atty. Anatolio G. Alcoba and, consequently, the plaintiffs have been served with a copy of the decision to all legal intents and purposes at the expiration of five days from the first notice which was on March 29, 1948. The date of service must have commenced on April 3, 1948. And, the notice of appeal and appeal bond having been

filed on May, 20, 1948, the said record on appeal must be considered as filed out of time.

"Wherefore, the record on appeal and appeal bond having been filed out of time should be as they are hereby disallowed."

Under the facts of the case, the only question involved is whether the aforequoted order of the lower court is justified, or whether it exceeded its jurisdiction in disallowing the Record on Appeal in question. No copy of said Record on Appeal was attached to the petition and we cannot ascertain whether the same contains all the essential pleadings necessary for the appeal, but since no question is raised as to the correctness of said Record on Appeal, we presume that the same is correct and contains such essential pleadings.

It is undisputed that the Notice of Appeal was filed on May 20, 1948, and the Record on Appeal on May 28, 1948, or within thirty days from May 20, 1948, when a copy of the decision was served to Raymundo Mendiola by order of the respondent Judge. Under these circumstances it is our considered opinion that it cannot be successfully maintained that said Record on Appeal was presented out of time. Nevertheless, the respondent Judge disallowed said Record on Appeal on the ground that since March 23, 1948, copies of the decision were sent to Attys. Alcoba and Perfecto and that since that time the plaintiffs-petitioners should be considered as having been notified of said decision although his attorneys failed to receive said copies, for the negligence of the attorneys in furnishing information as to their changed address and claiming from the Post Office the registered and special delivery letters addressed to them bound their clients and consequently the doctrine laid down by Our Supreme Court in the case of *Ona versus Islas* (47 Phil., 162), is controlling. In that case, it was held:

"The notice was duly sent by registered letter to counsel at his address in the City of Manila and it is not intimated that the address was erroneous. There is nothing in the record to show that the postal authorities did not properly perform their duty and we must presume that the usual notice of the arrival of the letter at the Manila post office was delivered at the office of the said counsel. He failed to claim the letter and it was returned to the Court of First Instance marked 'unclaimed'. His failure to receive a copy of the order in question was therefore entirely due to his own negligence of which he cannot now be allowed to take advantage. As a practicing lawyer it was his duty to so arrange matters that official communications sent by mail would reach him promptly. Having failed to do so, he and his clients must suffer the consequences of his negligence. That he may have been absent from his office at the time the notification here in question arrived is no excuse."

It is further argued that the sending of the copy to the plaintiff and petitioner Raymundo Mendiola himself, at the instance of the court, on May 14, 1948, "was only an

act of judicial generosity" and that it should not be considered as starting period or date for counting the thirty days within which the Record on Appeal should be filed.

Upon a careful examination of the respondents' contentions, we find them untenable. The record shows that if the letters sent to the attorneys for the plaintiffs were not claimed, it was because they had no knowledge whatsoever about them. No notice of the existence of said letters in the Post Office of Manila was received by said attorneys, for the letters in question were sent by registered mail and special delivery and the mail carrier failed to contact said attorneys and did not leave any notice to them about said registered mail. Since it is a fact that said attorneys moved to other places, they have never been aware of the letters sent to them by the clerk of Court of Bulacan by registered mail and by special delivery on March 23, 1948. They are not therefore in the same condition as that negligent attorney mentioned in the case of *Ona vs. Islas supra*. In the latter case, the attorney for the petitioner did not change his address. Notice of the registered mail addressed to him was received in his office and through negligence failed to get said registered mail from the Post Office. Thus, the doctrine laid down in said case of *Ona* cannot be applied to the instant case. The respondent Judge, in his answer, contends that Attys. Alcoba and Perfecto have been negligent in that they failed to notify the Clerk of Court of Bulacan of their change of address, but even conceding this fact to be true, said negligence should not redound to the prejudice of the herein plaintiffs-petitioners who zealous of their rights, after having been notified, caused their attorneys to file immediately the Notice of Appeal and the Record on Appeal for the protection of their interest. Moreover, when on May 27, 1948, the respondent Judge caused the Clerk of Court to send a copy of the decision to Raymundo Mendiola, one of the plaintiffs-petitioners, he did so evidently because he was convinced that there was no valid notification to the plaintiffs-petitioners notwithstanding the fact that copies of the decision had been sent to their attorneys by registered mail and special delivery which were not received by said attorneys. Hence, his novel theory that sending of the copy of said decision on May 27, 1948, to Raymundo Mendiola was an act of generosity, cannot be accepted as good and reasonable. Judicial officers should not act on generousities but comply with the duties prescribed for them by law and administer practical justice to the litigants. In this particular case, the respondent Judge failed to do so and without justification disallowed the Record on Appeal in question.

Wherefore, petition is granted and the respondent Judge, or whoever actually takes his place, is ordered to approve

and certify to this Court the said Record on Appeal, unless it be questionable on other legal grounds. No pronouncement with regard to costs. It is so ordered.

Torres, Pres. J., and Felix, J., concur.

Petition granted.

[No. 904-R. February 8, 1949]

REMEDIOS M. SALAZAR, plaintiff and appellee, *vs.* BHAGWANDAS BULCHAND GIDWANI, PACIFIC UNION INSURANCE Co., and SHERIFF OF THE CITY OF MANILA, defendants and appellants.

1. CONTRACT STATUTE OF FRAUDS CANNOT BE INVOKED BY A PERSON NOT A PARTY IN A CONTRACT; CASE AT BAR.—The statute of frauds cannot be invoked by a person not a party in a contract, like appellant Gidwani, who had nothing to do with that contract Exhibit A entered into between the heirs of Badomero Cosme, on one hand, and Remedios M. Salazar, the appellee, on the other. And not because said Exhibit A was not signed by all the heirs of Baldomero Cosme, could the appellant Gidwani resort to the statute of frauds to defeat the action of the appellee and thus keep for himself a property sold at public auction which belongs not to his judgment debtor but the appellee herein.
2. PUBLIC AUCTION; FAILURE TO FILE THIRD PARTY CLAIM, EFFECT OF, UPON RIGHT OF OWNER TO RECOVER PROPERTY SOLD.—The action to recover property is lost only by prescription, and not because a property is sold at public auction, its true owner may be estopped from claiming it. With or without a third party claim, the true owner of a property could recover it unless his right thereto has prescribed. In cases of attachment, it is only the right to claim for damages that is lost when no third party claim has been duly filed, or, if there has been filed any, the action for damages was not presented within the time prescribed by law.

APPEAL from a judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Estanislao A. Fernandez, Jr. and Roman B. Antonio for appellants.

Pimentel & Pimentel for appellee.

ENDENCIA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Manila, the dispositive part of which is as follows:

“Por lo expuesto, se dicta sentencia, condenando a los demandados a entregar el piano descrito en la demanda en el estado en que se hallaba cuando el Shériff lo embargó, o a pagar su valor de ₱5,000 a la demandante, otra cantidad equivalente a ₱200 mensuales desde el 1.º de enero de 1946 hasta el día en que se haga efectivo el pago de su importe de ₱5,000, más las costas del juicio.”

Appellant claims that the trial court erred:

"I. In proceeding with the reception of the direct testimonies of, the plaintiff and her witnesses in violation of the substantial right of the defendant.

"II. In giving full weight and credence to the testimonies of the plaintiff and her witnesses, in admitting Exhibit A as the deed of absolute sale of the piano in question, and in declaring the plaintiff to be the owner thereof.

"III. In finding that a contract of lease of the piano in question existed between Remedios M. Salazar and the Intermezzo Night Club.

"IV. In ordering the defendant to pay P200 as monthly rentals From Jan. 3, 1946 until the delivery of the piano in question or the payment of P5,000, contrary to and/or in the absence of evidences."

The record discloses that appellant Bhagwandas Bulchand Gidwani was plaintiff in civil case No. 71604, instituted by him against the Intermezzo Night Club for goods taken by the latter. In that civil case, upon petition of Gidwani, a piano used by the said night club was attached. On January 17, 1946, appellee, through her counsel, wrote the Sheriff of Manila (Exhibit C) informing the latter that the piano was her property and not of the Intermezzo Night Club, and to strengthen her claim she sent to the Sheriff of Manila, together with her letter, and affidavit (Exhibit C-1) wherein she stated her ownership over said piano. In said civil case No. 71634, judgment was rendered on December 6, 1945, and upon its finality, a writ of execution was issued by the court on March 6, 1946. Thereupon, the piano in question was ordered sold at public auction to satisfy the judgment, and when the execution sale was about to be made, appellee Remedios M. Salazar appeared before the Sheriff of Manila and reiterated her claim over the piano in question. When appellant Gidwani filed an indemnity bond of P5,000, in accordance with law, the sale of said piano at public auction was carried on, and as a result he was awarded the piano, on April 6, 1946, as the highest bidder thereof for the sum of P1,000. Thereafter, and in order to recover said piano, Remedios M. Salazar instituted the present civil case wherein the aforementioned decision subject of the present appeal was rendered.

In this appeal, the main contention of the appellants is that the evidence presented by the appellee does not conclusively show her ownership over the piano in question. It is claimed that the document entitled "Deed of Absolute Sale" (Exhibit A), offered in evidence by the appellee to show that the piano in question was sold to her by the heirs of Baldomero Cosme, is inadmissible in evidence, for the same fails to satisfy the requirements of the statute of frauds, was tainted with fictitiousness and fraud and presented without having been duly identified, and it is self-serving evidence, and, therefore, that said Exhibit A cannot be considered sufficient basis for declaring the herein appellee as the owner of the piano in question.

Upon a careful examination of Exhibit A, we find that the same is signed by one Paulita C. de Mendoza, who testified in this case in favor of the plaintiff and appellee to the effect that the piano in question was sold by her and the heirs of Baldomero Cosme for the sum of ₱100,000 Japanese money, and that the signature appearing at the bottom of Exhibit A was hers. Exhibit A was therefore identified by this witness, hence appellants' contention that Exhibit A was not identified, is completely groundless.

As to the pretension that Exhibit A was fictitious or simulated, no evidence was presented by the appellants to show it. Neither did the appellants adduce any proof that plaintiff's testimony, as well as that of Paulita C. de Mendoza, about the sale in favor of the former of the piano in question in Pagsanjan on January 21, 1945, as it appears in Exhibit A, were false. We see no reason therefore why the pronouncement of the lower court as to the validity of said Exhibit A and its probative value in connection with the sale of the piano in question in favor of Remedios M. Salazar should be altered.

It is however vehemently contended by the appellants that Exhibit A failed to satisfy the requirements of the statute of frauds, in that it was signed by Paulita C. de Mendoza and not by all the heirs of Baldomero Cosme, the former owner of the piano in question, and consequently said Exhibit A is unenforceable to support appellee's ownership over the piano in question. As to this point, suffice it to say that to enforce appellee's right over the disputed piano, it is immaterial whether document Exhibit A was signed by all the heirs of Baldomero Cosme or only by one of them in the name of all the said heirs, for the present case is not for specific performance of contract but for recovery of a movable property. While it is true that Exhibit A was not signed by all the heirs of Baldomero Cosme and it may fall under the statute of frauds if any of the heirs of Baldomero Cosme would file an action to annul such Exhibit A, yet before said Exhibit A is annulled by a competent court, the same grants Remedios M. Salazar right of ownership over the piano in question and entitles her to recover it and therefore to institute the present action. Moreover, the statutes of frauds cannot be invoked by a person not a party in a contract, like appellant Gidwani, who had nothing to do with that contract Exhibit A entered between the heirs of Baldomero Cosme, on one hand, and Remedios M. Salazar, the appellee, on the other. And not because said Exhibit A was not signed by all the heirs of Baldomero Cosme, could the appellant Gidwani resort to the statute of frauds to defeat the action of the appellee and thus keep for himself a property sold at public auction which belongs not to his judgment debtor but to the appellee herein. Were we to countenance appellants' theory

the result will be that appellant Gidwani will become the owner of a property purchased by him at public auction which belongs to a third party and not to his judgment debtor.

As to appellants contention that document Exhibit A is self-serving and therefore inadmissible evidence, it requires no serious consideration. The document was signed by another person, not by the appellee, and it was identified by Paulita C. de Mendoza who signed it, and unless the latter's testimony is traversed by other evidence of record—which is not the case—Exhibit A cannot be assailed as self-serving and inadmissible evidence.

Another principal contention of the appellants is that a third party claim for property under attachment filed without being supported by an affidavit of title thereto or affidavit of right to possession thereof, cannot be considered a third party claim, and consequently the one filed by the appellee in civil case No. 71604, was not a legal third party claim from which may entitle her to bring the present action against the appellants, for it was presented without any affidavit of ownership. This contention is also untenable. Firstly, because Exhibit C and C-1 completely refute such contention. Exhibit C is a letter addressed by the appellee through his counsel Amador S. Gomez to the Sheriff of the City of Manila claiming that it was her piano that was attached in civil case No. 71604 of the Court of First Instance of Manila; and Exhibit C-1 is an affidavit wherein she stated that she was the owner of said piano and that she bought it from the heirs of Baldomero Cosme and Mrs. Paulita C. de Mendoza, on January 21, 1945, for the sum of ₱100,000 in Japanese currency. Secondly, it appears from the record that appellant Gidwani had to file the corresponding indemnity bond, in the amount of ₱5,000 in Philippine currency, so that the writ of execution in civil case No. 71604 would be carried out, and that only after the filing of said bond was the sale at public auction of said piano preceded on. These facts show that there was a third party claim duly filed in said civil case No. 71604, otherwise the Sheriff would not have caused appellant Gidwani to file an indemnity bond in order that the sale of said piano might be carried on.

It is likewise contended by the appellants that the damages awarded by the trial court in favor of the appellee is not supported by the evidence of record. The record shows that the trial court ordered the appellant Gidwani to pay to the appellee the sum of ₱200, as monthly rental, from January 1, 1945 up to the time the piano in question is delivered to the appellee or its value made good. Appellants contend that this is not supported by the evidence of record. Upon examination of the evidence, it appears that the appellee herself testified that from January, 1946

up to July 30, 1946, she was at most entitled to receive ₱100 for the rent of the piano in question, but not ₱200 from January 19, 1946. The decision therefore of the court *a quo* allowing ₱200 monthly rental from January, 1946, runs counter the evidence and should be modified by reducing the amount of damages to the monthly sum of ₱100 from January 19, 1946.

Another contention of the appellants is that a third person is estopped from claiming a property after the legal proceedings thereon is ended and the Sheriff has sold the same on execution, citing in support thereto the case of *Alpuerto vs. Perez Pastor and Roa* (38 Phil., 785, 797). This contention is likewise untenable. The case invoked by the appellants is evidently not in point with the present case, a clear fact which we deem it unnecessary to elucidate. Moreover, the contention has no foundation in law. The action to recover property is lost only by prescription, and not because a property is sold at public auction, its true owner may be estopped from claiming it. With or without a third party claim, the true owner of a property could recover it unless his right thereto has prescribed. In cases of attachment, it is only the right to claim for damages that is lost when no third party claim has been duly filed, or, if there has been filed any, the action for damages was not presented within the time prescribed by law.

In view of all the foregoing, and upon modification of the decision appealed from, as above indicated, the same is affirmed in all other respects, with costs against the appellants.

Torres, Pres. J., and Felix, J., concur.

Judgment modified.

[No. 1800-R. February 8, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
JOVITA FERNANDEZ, defendant and appellant

CRIMINAL LAW; ESTAFA; ELEMENTS OF THE CRIME; SECTION 1, ARTICLE 316, REVISED PENAL CODE.—Under the terms of paragraph 1 of Article 316 of the Revised Penal Code, the necessary elements of the crime prosecuted in the case at bar are: (a) that the person pretending to be the owner of the real property conveyed, sold, encumbered or mortgaged shall not be the owner thereof, and (b) that by such conveyance, sale or mortgage, the vendee, creditor or mortgagee shall suffer damages. This latter element is inherent to every crime of *estafa* because the amount of the damage determines the jurisdiction of the court and the nature and extent of the penalty to be imposed upon the defendant. In cases of *estafa* any disturbance of property rights is sufficient to constitute the necessary element of damage (*U. S. vs. Goyenechea*, 8 Phil., 117; *U. S. vs. Malong*, 36 Phil., 821), but the disturbance of complainant's property rights in the case at bar took place long before the execution of Exhibit B and was not the result or consequence of said instrument

on which the charge of *estafa* was based. Damage not having been established in this case, the accused is acquitted.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Palacio, J.

The facts are stated in the opinion of the court.

Fernandez, Unson & Patajo for appellant.

Assistant Solicitor-General Inocencio Rosal and *Solicitor Jose G. Bautista* for appellee.

FÉLIX, J.:

Jovita Fernandez, an old woman of over 64 years of age, is the sister-in-law of Mariano Bautista, the alleged offended party, because the latter was married to the former's sister, the late Cornelia Fernandez. The record shows that during the lifetime of Cornelia and one year after the latter's marriage to Mariano, her parents donated to Jovita and Cornelia a piece of land described as follows:

"A parcel of rice land situated in the *barrio* of Umangan, Mangatarem, Pangasinan, containing an area of 9,727 square meters, more or less, bounded on the N. by creek, on the E. by Pascual Fernandez, on the S. and W. by Ramon Ventenilla, covered by current tax declaration No. 15429 and assessed at P60."

According to said donation, the land was to be divided equally between the two sisters, the *eastern* portion to correspond to Cornelia while the western portion was to appertain to Jovita. Mariano Bautista, Cornelia's husband, worked by himself the land assigned to his wife until he hired Marceliano Nadal as his tenant.

Exhibit 2 purports to evidence that on December 1, 1910, Cornelia Fernandez, in consideration of the sum of P130 paid to her by Balbino Corpus, Jovita's husband, sold him the *eastern* portion of the land she had inherited from her parents. By virtue of this sale the spouses Balbino Corpus and Jovita Fernandez became the owners of the whole land above described, the eastern portion as of their conjugal partnership, while the western portion pertained to Jovita Fernandez.

On June 8, 1927, Jovita Fernandez and Balbino Corpus for and in consideration of the sum of P40 and of two *oyones* and one bundle of palay weighing 332 per *oyon*, gave as security or as "sale-mortgage" Jovita's *western* portion of said land, of an extension of 48½ ares and 13½ centares, covered by tax declaration No. 30261, the possession of which was retained by the debtors (Exhibits 1 and 1-a). As the spouses Balbino Corpus and Jovita Fernandez were not able to pay Mariano Bautista the sum of P40 and the two *oyones* and one bundle of palay, on February 27, 1928, Jovita Fernandez by the further consideration of an additional amount, executed a deed of absolute sale of her land of an extension of 97 ares and 27 centares

(apparently the eastern and western portions of the whole aforementioned land) in favor of Mariano Bautista, who took over the possession thereof so that he could cultivate it by himself (Exhibit A).

In 1941 Mariano Bautista went to Nueva Vizcaya, and he claims that Balbino Corpus and his children, taking advantage of his absence grabbed from his tenant Cirilo Fernandez the land covered by the deed of sale Exhibit A which Jovita Fernandez had conveyed by said instrument to him. When Mariano Bautista returned to Mangatarem in November of 1941, he found Jovita Fernandez and her family working and possessing the land, but as the harvest was to be made on February 1942, and by then the Japanese forces were in Mangatarem, he did not do anything mainly because he had heard that many people in the locality were being killed. He only talked to the spouses Balbino and Jovita in 1942, and they returned the *eastern* portion but refused to do so with regard to the western portion because it had been sold with *pacto de retro* to Buenaventura Tolentino. That portion has not been returned to the offended party even until the present for they (Balbino and his wife) claimed that said portion was theirs.

Based on the facts appearing in the preceding narration, and considering that Jovita Fernandez, complainant's sister-in-law, did not come within the exemption provided in article 332 No. 3 of the Revised Penal Code, because the complainant and Jovita and her husband did not live together, and considering further that Jovita Fernandez alone had executed Exhibit A, and that part of the property sold by this deed had been mortgaged to Buenaventura Tolentino, said Jovita Fernandez was prosecuted for the crime of estafa, to the damage and prejudice of Mariano Bautista in the sum of ₱100. After the preliminary investigation conducted by the Justice of the Peace Court of Mangatarem, and on motion of the defendant, the Justice thereof, by order of December 18, 1943, caused the transmittal of the records to the Court of First Instance of Pangasinan, where on February 24, 1944, the following information was filed:

"The undersigned provincial fiscal accuses Jovita Fernandez of the crime of ESTAFA, committed as follows:

"That on or about the 26th day of April, 1942, in the municipality of Mangatarem, Province of Pangasinan, Philippines, and within the jurisdiction of this Court, the above-named defendant, having previously sold a parcel of land of his property, situated in the barrio of Umangan, of said municipality of Mangatarem, in favor of the offended party Mariano Bautista for the sum of ₱200, by virtue of a Deed of Sale executed on the 27th of February, 1928, attached to the records of this case and marked as Annex A, representing himself to be still the owner of said land, did then and there, willfully, unlawfully and feloniously, and with intent to defraud, sell with right to repurchase one-half of the said parcel of land to one Buenaventura Tolentino for the sum of ₱25, on April 26, 1942, to

the damage and prejudice of said Mariano Bautista in the sum of ₱100. Contrary to the provisions of section 1, Article 216, of the Revised Penal Code.

"Lingayen, Pangasinan, February 24, 1944.

"(Sgd.) JOSE R. DE VENECIA
"Provincial Fiscal"

After the institution of this criminal action, or on July 26, 1944, Mariano Bautista filed in the Court of First Instance of Pangasinan against Buenaventura Tolentino and Jovita Fernandez a complaint for reivindicacion of and ejectment from the same property (Exhibit 3), which case was pending at the time the lower court rendered its decision in the criminal case now before us.

In said decision, promulgated after proper proceedings and hearing, the court found Jovita Fernandez guilty as charged in the information, and sentenced her to suffer 2 months and one day of *arresto mayor* and to pay a fine of ₱100, with subsidiary imprisonment in case of insolvency, and to pay the costs. Not satisfied with this decision the defendant brought up the case to us on appeal, and in this instance her counsel contends that the lower court erred:

"(1) In passing in this criminal case upon the question of the efficacy and validity of the sale of the land in question, allegedly made by the accused appellant in favor of the offended party in 1928, notwithstanding that long before the trial of this criminal case there had been a pending case between the same parties relating to the same property where the genuineness and validity of the alleged sale is the main issue;

"(2) In finding in favor of the genuineness and validity of the sale allegedly made by the accused-appellant in favor of Mariano Bautista in 1928, evidenced by Exhibit A;

"(3) In finding the accused and appellant guilty beyond reasonable doubt of the crime of estafa and in sentencing her to an imprisonment of 2 months and 1 day of *arresto mayor*, to pay a fine of ₱100, with subsidiary imprisonment in case of insolvency, and to pay the costs; and

"(4) In not acquitting the accused and appellant of said crime of estafa."

The facts proved by the evidence on record are as mentioned in the preceding narration. Considering, however, that the prosecution denies the due execution of Exhibit 2, and the defense pretends that appellant's signature in Exhibit A was secured through intimidation, without consideration, in ignorance of the contents thereof and without the attendance of the instrumental witnesses, we deem it convenient to pass upon the probatory value of said exhibits.

Exhibit 2, purported to be a deed of sale signed by Cornelia Fernandez, is a public instrument apparently executed by her before Notary Public Cenon Labrador on December 1, 1910, whereby she sold to Balbino Corpus the *eastern* portion of the land that she inherited from her parents. There seems to be no question that this Exhibit 2 bears

the earmarks of genuineness and authenticity, though it would be of no sequence in the case at bar if Exhibit A was valid and binding upon appellant.

Exhibit A is a deed of conveyance of the whole land left to Jovita and Cornelia Fernandez by their parents, covering an extension of 97 ares and 27 centares. Judging from the statements and attitude of the complainant, we gather the impression that he was in the belief that the land acquired by him from Jovita Fernandez, who executed said Exhibit A alone and without the assistance of her husband, was only the *western* portion of the land which formerly corresponded to her. In her defense appellant alleges that on June 8, 1927, she and her husband Balbino Corpus obtained a loan of ₱40 from her sister and brother-in-law, and to secure the payment of that sum they executed Exhibit 1 (a deed of mortgage in favor of said spouses of the land in question—the *western* half), wherein the usurious interest of 2 *oyones* and one bundle of palay was included as part of the loan. Because they were unable to pay Mariano Bautista and his wife the interest of 2 *oyones* of palay on said loan of ₱40 due to a flood which destroyed the crops, Mariano Bautista took over the possession of said *western* half so that he might cultivate it by himself and apply the products derived therefrom to the payment of the interests. This possession of Mariano Bautista lasted for 10 years, or until 1939, when appellant and her husband claimed to have paid him said loan and got back the possession of said *western* half. Upon weighing the evidence produced by appellant in this respect, we deem it insufficient to overcome the probatory value of Exhibit 1. Anyway, this document is not a decisive factor in the solution of the main question at issue, i.e., whether or not appellant is guilty of *estafa* for having disposed as hers of a property owned by the complainant, to the damage and prejudice of the latter. In our opinion, the answer to this question greatly depends on whether or not Exhibit A was duly executed and valid and binding upon appellant.

With respect to Exhibit A appellants denied having conveyed the land described therein, or any portion thereof, to Mariano Bautista in consideration of the sale therein mentioned. According to her in 1928, while she was alone in her house, Mariano Bautista, accompanied by Lino Abad, made her sign a document, presumably the one that now appears to be Exhibit A, the contents of which she never knew nor were ever explained to her; that if she subscribed the document it was because she was caught off-guard by Mariano Bautista and Lino Abad who scared and frightened her into signing the document, what she did without the presence of the persons attesting as instrumental witnesses, whom she does not even know; and that she has never signed any other document before said Lino Abad.

These averments of the appellant, alone and uncorroborated as they are, cannot overcome the probatory value of Exhibit A which involves a private transaction presumed to have been fair, regular and executed in the ordinary course of business—section 69 (*p-q*), Rule 123 of the Rules of Court. Consequently, we have to declare that Exhibit A must be considered as duly executed and binding upon appellant.

Based on this conclusion, let us now go into the core of the main question at issue, to wit: whether or not appellant is guilty of estafa for having sold *a retro* to Buenaventura Tolentino, for the sum of P25, the western portion of the land she inherited from her parents when she had already sold that property to the complainant Mariano Bautista (Exhibit A) who claims to have suffered damages on account of the second sale. The pertinent part of article 316 of the Revised Penal Code, under which the case at bar was instituted, is as follows:

"ART. 316. *Other forms of swindling.*—The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value shall be imposed upon:

"1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same."

* * * * *

Under the terms of these provisions the necessary elements of the crime prosecuted in this case are: (*a*) that the person pretending to be the owner of the real property conveyed, sold, encumbered or mortgaged shall not be the owner thereof, and (*b*) that by such conveyance, sale or mortgage, the vendee, creditor or mortgagee shall suffer damages. This latter element is inherent to every crime of estafa because the amount of the damage determines the jurisdiction of the court and the nature and extent of the penalty to be imposed upon the defendant. Exhibits A and B do not seem to have been registered, undoubtedly because the land involved was not a registered property. We might concede also that at the time of the execution of Exhibit B—April of 1942—appellant and her husband were no longer the owners of the land they sold *a retro* to Buenaventura Tolentino, but the case at bar is quite different from the case of *U. S. vs. Drillon*, 36 Phil., 834, in which the second purchaser registered his conveyance and destroyed the title of the first purchaser. The property rights of the herein complainant over the land in question were not in the least prejudiced or affected. If Jovita and her husband caused any damage by said *sale a retro*, the injured party would not be the complainant but the vendee Tolentino. The record, however, shows that this man who testified as a witness for the prosecution, clearly stated that he has no claim over said land because

in the year 1943 Balbino Corpus redeemed it to his entire satisfaction and got from him the return of Exhibit B.

It is true that in cases of *estafa* any disturbance of property rights is sufficient to constitute the necessary element of damage (U. S. *vs.* Goyenechea, 8 Phil., 117; U. S. *vs.* Malong, 36 Phil., 821), but the disturbance of complainant's property rights charged in this case against appellant took place long before the execution of Exhibit B, when in 1941 Mariano Bautista went to Nueva Vizcaya, and Jovita and her husband allegedly grabbed the possession of the land in question from his tenant Cirilo Fernandez, possession which they withhold up to the present, and which can only give rise to a civil liability. Undoubtedly because of such liability on July 26, 1944 (after the institution of the case at bar but before it was decided in the lower court—May 28, 1947), Mariano Bautista filed civil case No. 783 of the Court of First Instance of Pangasinan for reivindication and ejectment against Buenaventura Tolentino and Jovita Fernandez (Exhibit 3). Of course the institution of the case at bar and its disposal by the trial judge before said civil case which was left pending, constitutes no error on the part of the lower court, as contended by appellant in her first assignment of error, because section 1 (c), Rule 107 of the Rules of Court provides:

“(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;”

Wherefore, and considering that one of the essential elements of the crime of *estafa*, i.e., damage, has not been established in this case, we have to declare that the evidence on record does not show that appellant is guilty of the crime she is charged in the information. The decision appealed from is, therefore, reversed and Jovita Fernandez acquitted, with costs *de oficio*.

It is so ordered.

Torres, Pres. J., and Endencia, J., concur.

Judgment reversed; defendant acquitted with costs de oficio.

[No. 2359-R. February 8, 1949]

Intestate estate of Francisca Maneja, deceased; EUSEBIA DE LEON, petitioner and appellee; RAYMUNDA PRECLARO, oppositor; AMADO REY, appellant.

1. PLEADING AND PRACTICE; SUMMARY SETTLEMENT OF ESTATE OF DECEASED PERSON; PROCEDURE; SECTION 2, RULE 74, RULES OF COURT.—When it appears that the gross value of the estate of a deceased person is less than ₱6,000, the court may settle said estate summarily pursuant to Section 2 of Rule 74 of the Rules of Court. Such procedure is an exception to

the general rule that when a person dies leaving property in the Philippines, such property should be judicially administered and the competent court should appoint a qualified administrator in the order established by the Rules of Court. By such procedure, the estate of the deceased is valued; his debts, if any, are ordered paid; his will, if any, is allowed; his heirs and legatees are declared, and the distribution of the estate is made, all in a single order, without the appointment of an administrator or executor.

2. *Id.*; *Id.*; SECTION 2, RULE 75, RULES OF COURT INAPPLICABLE TO CASE AT BAR.—Section 2 of Rule 75 of the Rules of Court, relative to which testate or intestate proceeding the estate is to be distributed upon dissolution of the marriage, invoked by the appellant, is not applicable to the case at bar, where, as already stated, no testate or intestate proceeding is at all necessary.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Andres Sta. Maria for appellant.

Antonio Barredo for appellee.

GUTIERREZ DAVID, J.:

Francisca Maneja died on January 7, 1946. In her lifetime she was married to Amado Rey. The only property she left upon her death was one-half share of the "Rey Welding Shop," situated at 651 Camba Street, Manila. She left no children. Her nearest surviving relative is her mother Eusebia de Leon.

On April 1, 1947, Eusebia de Leon filed in the Court of First Instance of Manila an application for the summary settlement of the property left by said deceased. Raymunda Preclaro filed an opposition thereto based on her claim against the estate of the deceased in the amount of ₱2,000, which, according to her, was borrowed for the estate by Amado Rey, husband of the deceased, on January 7, 1946, and for which she prayed the court to order payment. After due publication of the required notices, the trial court heard the petitioner and the claimant; and on October 23, 1947, rendered a judgment declaring Eusebia de Leon sole heir to one-half of the "Rey Welding Shop" with right to the usufructuary rights of Amado Rey as surviving spouse; and requiring Eusebia de Leon to file a bond of ₱400 conditioned on the payment of any just claim which may be filed against the estate within two years. In the decision a pronouncement was made to the effect that it has not been established that the deceased or Amado Rey was indebted to claimant Raymunda Preclaro in the amount claimed by the latter.

Against the decision of the lower court, Amado Rey interposed this appeal claiming that said court was in error (1) in ordering a summary settlement of the estate of the deceased; (2) in giving credit to the testimony of the petitioner Eusebia de Leon, and in holding that the

"Rey Welding Shop" is valued from ₱6,000 to ₱8,000 at the time of the dissolution of the marriage; (3) in not giving credit to the testimony of appellant that the estimated value of said shop is only ₱2,500; and (4) in not admitting the claim of Raymunda Preclaro and in not holding that the same is chargeable to the conjugal partnership of the appellant and the deceased.

It appearing that the gross value of the estate of the deceased Francisca Maneja is less than ₱6,000, the lower court was right in settling said estate summarily pursuant to section 2 of Rule 74 of the Rules of Court. Such procedure is an exception to the general rule that when a person dies leaving property in the Philippines, such property should be judicially administered and the competent court should appoint a qualified administrator in the order established by the Rules of Court. By such procedure, the estate of the deceased is valued; his debts, if any, are ordered paid; his will, if any, is allowed; his heirs and legatees are declared, and the distribution of the estate is made, all in a single order, without the appointment of an administrator or executor.

Section 2 of Rule 75 of the Rules of Court, relative to which estate or intestate proceeding the estate is to be distributed upon dissolution of the marriage, invoked by the appellant, is not applicable to the case at bar, where, as already stated, no testate or intestate proceeding is at all necessary.

Claimant Raymunda Preclaro and Amado Rey, who is a nephew of the former's husband, tried to establish by their testimony that a loan of ₱2,000 was obtained from said claimant for the purpose of buying some equipments and machines for the welding shop and of paying for the medicines of Francisca Maneja who had been ill with tuberculosis for quite a long time. The claim is not supported by any written evidence. It was denied by Eusebia de Leon who testified that ₱1,500 of the capital for the establishment of the welding shop came from her and that with what the shop was making there was sufficient to pay the expenses for the sickness of the deceased. Hence, the court correctly dismissed the claim.

There being no merit in the appeal, the decision appealed from is hereby affirmed, with costs against the appellant.

Reyes and Borromeo, JJ., concur.

Judgment affirmed.

[No. 2879-R. February 11, 1949]

JUAN GILBUENA, protestant and appellant, *vs.* BONIFACIO R. TICMAN, protestee and appellee

1. ELECTION LAW; PROTEST; VALIDITY OF BALLOTS PRESUMED.—The ballots cast at an election are presumed to be valid in the absence of clear and sufficient reasons which justify the conclusion

that they have been fraudulently prepared. Said ballots should not be rejected. The allegation and contention of the parties that the ballots composing each of the several groups into which the handwriting experts divided them were prepared by one hand or had common characteristics and similarities in appearance which in their judgment show that they were written by one hand, is not sufficient ground for the court to hold that they were really written and prepared in the manner testified to by said experts and that frauds were committed during the election, unless the identity of the handwriting on the ballots alleged to be fraudulent is such that the fraud appears to be beyond question.

2. ID.; ID.; BALLOTS WRITTEN THROUGH USE OF MOLD, VOID.—Ballots which are written through the use of a mold, which is a mechanical process, are null and void.

APPEAL from a judgment of the Court of First Instance of Rizal. Castelo, J.

The facts are stated in the opinion of the court.

Ramon Diokno and *Celestino L. de Dios* for appellant.
Javier & Javier and *I. Santos Diaz* for appellee.

RODAS, J.:

During the general elections for provincial and local officials held on November 11, 1947, Juan Gilbuena and Bonifacio Ticman were the official candidates for the office of the municipal mayor of Muntinglupa, Rizal. On November 14, 1947, the latter was proclaimed by the municipal board of canvassers mayor-elect with a plurality of 23 votes over the former, who, on November 19, filed his election protest with the Court of First Instance of Rizal, being Case No. 361 of said court, on alleged irregularities committed in election precincts Nos. 1, 3, 5, 7, 8 and 9, which changed the result of the election.

On November 24, the protestee filed his answer denying the material allegations of the protest and filed in turn a counter-protest on irregularities alleged to have been committed in election precincts Nos. 4, 10 and 11.

After the trial the court found that the protestant received the following votes in each of the following precincts:

No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
84	99	200	213	59	104
No. 7	No. 8	No. 9	No. 10	No. 11	No. 12
44	22	35	267	193	155

or a total of 1,475, while the protestee in turn received the following votes in each of the following precincts:

No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
149	304	203	23	254	98
No. 7	No. 8	No. 9	No. 10	No. 11	No. 12
115	65	106	27	86	117

or a total of 1,547.

In accordance with said results, the lower court declared the protestee Bonifacio Ticman mayor-elect of the mun-

icipality of Muntinglupa, Rizal, with a majority of 72 votes over the protestant, from which decision said protestant has appealed to his court on the following assignments of error:

I

"Al no admitir como votos a favor del apelante las balotas exhibitos D-5, D-10 y D-16 del precinto 3; H-3 del precinto 8; y H-5 del precinto 4.

II

"Al admitir y declarar como votos validos a favor del apelado las balotas Exhibitos 7, 8, 10 y 13 del precinto 5; 15 del precinto 7; 18, 20 y 21 del precinto 8; y 22 del precinto 9.

III

"Al no dar credito al testimonio del experto caligrafo Sr. Jose G. Villanueva, euando éste dijo que las balotas del apelado que ha mencionado en su testimonio oral y las que ha enumerado en su informe sintético Exhibito I adolecen de los defectos fatales que ha señalado, y consiguientemente erró al admitir todas y cada una de dichas balotas como votos validos y favor de dicho apelado.

IV

"Al adnutir las conclusiones del Sr. Edgar Bond, caligrafo del apelado, en relación con las balotas del apelante, y consiguientemente erró al no admitirlas como votos validos a favor del apelante.

V

"Al ño declarar alealde electo al apelante y no condenar, en su consecuencia, al apelado al pago de las costas y gastos incidentales de esta protesta."

Under the first assignment of error, appellant contends that the trial judge erred in rejecting the ballots marked Exhibits D-5, D-10, and D-16, of election precinct No. 3 on the ground that the name appearing thereon for the office of mayor is illegible. The name appearing on Exhibit D-5 for mayor is "J Gluouina." The one written on Exhibit D-10 for the same office reads "J. Gilloc E MA" and that appearing on Exhibit D-16 reads "Ju. Jinbubuuena." The name appearing in Exhibit H-3 on the line for mayor reads "J. TilocEnA" and Exhibit H-5 was rejected on the ground that there is no way of distinguishing which of the two names appearing on the line for mayor had been written last. Appellant contends that the rejection of said ballots was an error.

Under the second assignment of error, appellant contends that the court erred in admitting ballot marked Exhibit 7, where the only lines used were those for mayor and vice-mayor, as a valid ballot notwithstanding the fact that the name "B. Ticman" appearing on the line for mayor was written on a mold in which the name "B. Ticman" and the name of "J. Molera" appearing thereunder were etched; that the ballot marked Exhibit 8 of the protestee was erroneously admitted over the objection of the protestant on the ground that the name voted for mayor does not correspond to the name of the protestee nor does it have

the same sound; that Exhibits 10 and 13 should have been rejected on the ground that they were written by the same hand; that ballot 15 of the appellee corresponding to election precinct No. 7 was prepared by two hands and hence should have been rejected; that ballots marked Exhibits 18, 20 and 21 should have been rejected likewise because the surname "Ticman" was written on them by hands different from those which wrote the rest of said ballots; and that ballots marked Exhibit 22 should have been rejected on the same ground.

The failure of the lower court to give credit to the testimony of handwriting expert Jose G. Villanueva, to the effect that the ballots mentioned in his statement made in open court and in his report, Exhibit I, of the appellee were fatally defective, has been assigned as the third error committed by said court. Said handwriting expert points out two general grounds of objection to said ballots, to wit: (1) that the ballots corresponding to each group into which he had divided them had been written by one hand; and (2) that the handwriting appearing on the ballots of each group bears general common characteristics, similarities and like shape and formation.

Those ballots classified as defective on the ground that they were written by one hand which belonged to election precinct No. 3 were separated into 54 groups. Those coming from election precinct No. 9 were divided into 15 groups; those coming from election precinct No. 8, into 8 groups and those from election precinct No. 5, into 32 groups.

The fourth assignment of error is to the effect that the lower court erred in admitting the conclusions arrived at by the handwriting expert Edgar Bond, of the appellee, in connection with the ballots of the appellant, by holding that 71 out of the 86 ballots were null and void, each group having been prepared by one hand or with the use of molds, in the following manner, to wit:

Out of the 286 ballots adjudged by the commissioners in favor of the protestant, 49 ballots divided into 17 groups from election precinct No. 10 in favor of Juan Gilbuena were objected to by the protestee on the ground that the ballots of each group were prepared by one hand; and out of the 194 votes adjudged by the commissioners in favor of the protestant Gilbuena in precinct No. 11, 37 were objected to by the appellee, divided into 14 groups, on the ground that the ballots of each group were prepared by one hand.

In order to verify the opinions and conclusions arrived at by the expert of each side, the court examined one by one all the 272 ballots divided into several groups wherein, according to the handwriting expert Jose G. Villanueva, the ballots were prepared by one hand, or that they bear close

similarities, common characteristics and like shape and formation, as well as the different ballots composing the various groups into which the 86 ballots were divided which, according to the handwriting expert Edgar Bond, were written by only one person or were prepared on molds in which the names of the candidates appearing on said ballots were written.

The ballots cast at an election are presumed to be valid in the absence of clear and sufficient reasons which justify the conclusion that they have been fraudulently prepared. Said ballots should not be rejected. The allegation and contention of the parties that the ballots composing each of the several groups into which the handwriting experts divided them were prepared by one hand or had common characteristics and similarities in appearance which in their judgment show that they were written by one hand, is not sufficient ground for the court to hold that they were really written and prepared in the manner testified to by said experts.

Our Honorable Supreme Court in the case of *Olano vs. Tibayan*, 53 Phil., 171, laid down the following doctrine:

"The mere fact that each group of ballots appears to be written by one man is not, in itself, sufficient to destroy the presumption of their legality, arising from their being found in the valid ballot box in which they were deposited in the presence of the inspectors or watchers for the contending parties."

In the case of *Sarenas vs. Generoso*, 61 Phil., 559, the lower court said:

"Cotejadas las unas con las otras con detención, presentan realmente rasgos identicos de caligrafia. Y, añadiendose a esto la circunstancia de que en todas y en cada una de ellas aparecen uniformemente votadas las mismas personas para los mismos cargos, la objeción de que son fraudulentas está bien fundada."

The Supreme Court reversed said ruling, and said:

"The rejection of these 36 ballots is not justified upon the grounds stated by the trial court in the absence of conclusive evidence that these ballots are fraudulent. * * *."

Again in the case of *Coscolluela vs. Gaston*, 63 Phil., 64, the Court said:

"In order to justify the invalidating of some ballots which appear to have been written by one man, it must be shown * * * that their preparation was a part of a scheme designed to adulterate the suffrage. Otherwise stated, the fraud must be established by evidence *aliunde*."

This Court is mindful of the fact that at the time the Supreme Court laid down the foregoing doctrines, ballots could be prepared not by the voters themselves who were not able to write, but by someone else, and hence, the possibility of several ballots or group of ballots being written by one hand which was not allowed to be done during the

last general elections held on November 11, 1947; but in lieu of this possibility we have at present the fact that persons who received their primary education either in public or private schools where they were taught to follow one form or style of handwriting are likely to write or follow the same pattern. Such persons who are now voters of the same election precinct are likely to write their ballots in the manner and form they were taught in the school where they acquired their primary education. It goes, therefore, without saying that the conclusion arrived at by the handwriting experts in this case was without foundation.

This is not to say that frauds are not committed during elections through the preparation of several ballots by one man, but courts should not arrive at such a conclusion unless the identity of the handwriting on the ballots alleged to be fraudulent is such that the fraud appears to be beyond question.

In going over the ballots alleged to be illegible or bearing names which are not *idem sonans* with the name of the candidate for whom they were obviously intended, as well as those ballots alleged to be fraudulent, we find, in the first place, that those marked Exhibits D-5, D-10 and D-16 which, according to the decision of the trial judge, were illegible should be counted as valid votes in favor of the protestant as the names appearing thereon are not only legible; in fact they read "J. Gluouina", "J. GillvuEMA" and Ju. Jinbubuena", respectively, and should, therefore, be counted as valid ballots under the principle of *idem sonans*. With respect to Exhibit H-3 of precinct No. 8, which according to the trial judge was illegible, this court is of the opinion that the name appearing thereon reads "I. GilvecnA". The initial which seems to be "I" can easily be taken for "J", and under the principle of *idem sonans* "I. GilvecnA" should be counted as valid vote in favor of the protestant. As to the ballot marked Exhibit H-5 or Exhibit 25 of precinct No. 4, claimed by both parties and which according to the trial judge is hard to distinguish which name has been written last, the court finds that in the palimpsest the name first written was that of "Juan Gilbuena", not only because this last name is clearer and more legible than the other, but because the writer had written the capital letter "J" in the name "Juan Gilbuena" right on top of the capital "B" in the name "B. Ticman" and the small letter "a" in said name right on top the capital letter "T" in the surname "Ticman", leaving only uncovered the flourishing horizontal upper stroke and the final small letter "n" right on top of the small letters "i" and "c" in the surname "Ticman", while the capital letter "G" in the surname "Gilbuena" covers one-half of the small letter "n" in the surname "Ticman", and the small letter "i" in the surname "Gilbuena" on top

of the last letter "a" in the surname "Ticman" and the small letters "lb" in the surname "Gilbuena" cover the rest of the surname "Ticman", thus leaving the name "B. Ticman" almost obliterated and leaving quite a space for the rest of the surname "Gilbuena" in a clear and distinguishable manner to indicate that the writer had made up his mind to vote for Juan Gilbuena. This ballot should, therefore, be counted as good ballot in favor of the protestant.

Exhibit 7 is null and void, it having been written through the use of a mold, which is a mechanical process.

The name voted for mayor in Exhibit 8 which reads "Beimcio Ticmo" is *idem sonans* with "Bonifacio Ticman" and is, therefore, valid.

Exhibits 10 and 13 are valid votes, they having been written by different hands.

Exhibit 15 of precinct No. 7 presents no characteristic features showing that it was written by different hands; whereas Exhibit 18 of precinct No. 8 presents such characteristic features. The former is, therefore, valid and the latter void.

Exhibits 20 and 22 show no characteristic features that each of them was written by two hands, whereas Exhibit 21 bears such characteristics. Exhibits 20 and 22 are, therefore, valid, and Exhibit 21 void.

Among the groups of ballots into which the 272 ballots were divided and examined by the handwriting expert Jose G. Villanueva, the following groups were found to be null and void:

Exhibits D-51 and D-52, D-61, and D-62, and D-72, on the ground that the first two groups of ballots were each written by one hand and the last ballot by two hands;

Exhibits D-176 and D-177, having been written by one hand;

Exhibits D-182 and D-183; D-184, D-185, D-186, D-187, D-188, D-189 and D-191; D-192, D-193 and D-194; D-195 and D-196; D-204 and D-206; D-208 and D-209; D-227 and D-228; D-235 and D-236; D-239 and D-240; D-270 and D-271; and D-272 and D-273, each group having been written by one hand.

Among the ballots in favor of the protestant objected to by the protestee on the ground that each group of ballots were written by one hand, according to the testimony of the handwriting expert, the following were found to be null and void:

Exhibits 29, 29-A and 29-B; 30 and 30-A; 31-A, 31-N, 31-L, 31-C and 31-D; 31-I, 31-P, 31-M and 31; 31-F, 31-H, 31-J and 31-B; 31-G, 31-O, 31-K and 31-E; 32 and 32-A; 34 and 34-A; 36-A and 36; 37 and 37-A; 38 and 38-A; 39 and 39-A; 43, 43-A and 43-B; 44, 44-A, 44-B and 44-C; 45; 47 and 47-A; 51 and 51-A; 52 and 52-A; 53-A and 53, on the ground that each group of ballots were written by one hand and in fact many of the groups were written by one hand.

As a result of the close examination of the contested ballots covered by the first assignment of error, ballots

marked Exhibits D-5, D-10 and D-16 of precinct No. 3 should be counted as valid votes in favor of the protestant Gilbuena.

Ballot marked Exhibit H-3 of precinct No. 8 is a valid vote for protestant Gilbuena.

Ballot marked Exhibit H-5 or Exhibit 25 of precinct No. 4 is a valid vote in favor of the protestant Gilbuena.

Ballot marked Exhibit 7 of precinct No. 5 is a void ballot and should not be counted in favor of the protestee Bonifacio Ticman, while ballots marked Exhibits 8, 10 and 13 of the same precinct are valid votes in his favor.

Ballot marked Exhibit 15 of precinct No. 7 is a valid vote for Bonifacio Ticman.

Ballots marked Exhibits 18 and 21 of precinct No. 8 are void ballots and should not be counted in favor of the protestee Bonifacio Ticman, while ballot Exhibit 22 of precinct No. 9 is valid and the adjudication thereof in his favor was legal.

Among the 96 contested ballots of the protestee in precinct No. 3, five ballots marked Exhibits D-51 and D-52; D-61 and D-62; and D-72 were found to be void. These ballots should, therefore, be deducted from the total number of votes adjudged by the trial court in favor of Ticman in said precinct.

Among the 68 contested ballots divided into 32 groups of the protestee in precinct No. 5, on the ground that the ballots of each group were written by one hand, only ballots marked Exhibits D-235 and D-236; D-239 and D-240; and D-272 and D-273 were found to be void and should, therefore, be deducted from the 254 votes adjudged by the trial court in favor of the protestee Bonifacio Ticman.

Among the 19 ballots divided into 8 groups of precinct No. 8 of the protestee objected to on the ground that the ballots of each group were written by one hand, only ballots marked Exhibits D-227 and D-228 were found to be void, and they should, therefore, be deducted from the 65 votes of said precinct adjudged in favor of the protestee Bonifacio Ticman.

Among the 45 ballots of precinct No. 9 divided into 15 groups contested on the ground that the ballots of each group were written by one hand, only ballots marked Exhibits D-176 and D-177; D-182 and D-183; D-184, D-185, D-186, D-187, D-188, D-189 and D-191; D-192, D-193 and D-194; D-195 and D-196; D-204 and D-206; and D-208 and D-209 were found to be void or a total of 20 votes should be deducted from the 106 votes adjudged in favor of Bonifacio Ticman in said precinct.

Among the 49 contested ballots of the protestant in precinct No. 10, divided into 17 groups on the ground that the ballots of each group were written by one hand, the following were found to be null and void: Exhibits 29, 29-A and

29-B; 30 and 30-A; 31-A, 31-N, 31-L, 31-C and 31-D; 31-I, 31-P, 31-M and 31; 31-B, 31-H, 31-F and 31-J; 31-G, 31-O, 31-K and 31-E; 32 and 32-A; 34 and 34-A; 36-A and 36; 37 and 37-A; 38 and 38-A; 39 and 39-A; or a total of 34 votes which should not be deducted from the number of votes obtained by Gilbuena in precinct No. 10, because they had already been found to be void by the trial court. However, ballots marked Exhibits 35-A, 35-B and 35; 41-A and 41; 42-B, 42 and 42-A which were rejected by the trial court were found by this court to be valid and hence should be added to the number of votes adjudged in favor of Gilbuena in precinct No. 10.

Among the 37 contested ballots in precinct No. 11, divided into 14 groups on the ground that the ballots of each group were written by one hand, the court found as null and void the following ballots: Exhibits 43, 43-A and 43-B; 44, 44-A, 44-B and 44-C; 45; 47 and 47-A; 51 and 51-A; 52 and 52-A; 53-A and 53, or a total of 16 votes which were likewise found by the trial court void ballots and hence rejected. Said court, however, rejected ballots marked Exhibits 46 and 46-A; 50 and 50-A; 55-E, 55, 55-A, 55-B; and 56 and 56-A as void ballots, whereas this court found them to be valid, and should, therefore, be added to the votes obtained by Gilbuena in said precinct.

Summing up, there should be added three (3) votes consisting of Exhibits D-5, D-10 and D-16 to the number of votes obtained by the protestant Juan Gilbuena in precinct No. 3 and five (5) votes, Exhibits D-51 and D-52; D-61 and D-62; and D-72 should be deducted from Bonifacio Ticman.

In precinct No. 4, one (1) vote, Exhibit H-5, should be added to the number of votes adjudged in favor of the protestant Gilbuena.

In precinct No. 5, one (1) vote, Exhibit 7, should be deducted from the protestee Bonifacio Ticman and six (6) votes consisting of Exhibits D-235, D-236, D-239 and D-240; D-270 and D-271; and D-272 and D-273 should be deducted from the protestee Bonifacio Ticman.

In precinct No. 8 one (1) vote consisting of ballot marked Exhibit H-3 should be added to the number of votes adjudged to the protestant Gilbuena and four (4) votes consisting of ballots marked Exhibits 18, 21, D-227 and D-228 should be deducted from the number of votes adjudged to the protestee Bonifacio Ticman.

In precinct No. 9 twenty (20) votes consisting of Exhibits D-176 and D-177; D-182 and D-183; D-184, D-185, D-186, D-187, D-188, D-189 and D-191; D-192, D-193 and D-194; D-195 and D-196; D-204 and D-206; and D-208 and D-209 should be deducted from the protestee Bonifacio Ticman.

In precinct No. 10 eight (8) votes consisting of Exhibits 35-A, 35-B and 35; 41-B and 41; 42-B, 42 and 42-A should be added to the number of votes acquired by the protestant Juan Gilbuena.

In precinct No. 11 ten votes consisting of Exhibits 46 and 46-A; 50, 50-A; 55-E, 55, 55-A, 55-B; and 56 and 56-A should be added to the number of votes adjudged to the protestant Juan Gilbuena.

A recapitulation of the total number of votes received by the protestant and the protestee in each of the 12 precincts shows the following:

Precinct No.	Protestant	Protestee
1	84	149
2	99	304
3	203	198
4	214	23
5	59	247
6	104	98
7	44	115
8	23	61
9	35	86
10	275	27
11	203	86
12	155	117
	1,498	1,511

With the only modification in the total number of votes received by the protestant and the protestee, the judgment appealed from is affirmed, with costs against the protestant.

Jugo and De la Rosa, JJ., concur.

Judgment modified.

[No. 2149-R. February 14, 1949]

FELIPA PUERTO ET AL., plaintiffs and appellees, *vs.* GO YE PIN, defendant and appellant

1. DEBTOR AND CREDITOR; DEBT MORATORIUM; EXECUTIVE ORDER NO. 32, AS AMENDED, STILL IN FORCE.—Executive Order No. 32 on Debt Moratorium, as amended, in so far as obligations incurred during the enemy occupation are concerned, is still in force and consequently, the enforcement of the obligation to pay the rentals in question during said period has been suspended.
2. OBLIGATION AND CONTRACT; RESOLUTION OF CONTRACT; COURTS' DISCRETION TO ALLOW DEFAULTING PARTY A PERIOD WITHIN WHICH TO PERFORM HIS OBLIGATION; CASE AT BAR.—The Court is given discretionary power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based. And this discretionary power on the part of the Court should be exercised without hesitation in a case where a virtual forfeiture of valuable rights is sought. (*Kapisanan Banahaw vs. Dejarne*, 55 Phil., 338). To oust the defendant from the lot in question without giving him a chance to recover what his father and he himself had spent may amount to a virtual forfeiture of valuable rights.

APPEAL from a judgment of the Court of First Instance of Misamis Oriental. Belmonte, J.

The facts are stated in the opinion of the court.

Jose Valdehuesa for appellant.

Hernando Pineda for appellee.

DE LEON, J.:

On September 14, 1940, a lease contract (Exhibit A) over a parcel of land situated in the commercial section of the población of Cagayan, Misamis Oriental, containing 417 square meters, for a period of ten years extendible for another five years at the option of the lessee, was entered into between the plaintiffs and appellees, as lessors and Paulino Carvajal a lessee. The rental is fixed at ₱15 monthly for the first ten years, and if extended for five years, ₱20 monthly during the extended period. The contract also provides that all the provisions thereof shall extend to and include the heirs, successors, executors, etc., of both parties to the agreement.

Shortly after the execution of said contract, Carvajal constructed a two-story building on the 1st, valued approximately at ₱14,000 which, however, was wiped out by the incendiary bombs of the American liberation forces sometime in 1945. Sometimes in that same year, Carvajal was captured by the Japanese and since then has never been or heard from. Defendant Go Ye Pin as son and heir of Carvajal took possession of the premises after liberation, that is, about June 1945, and has been occupying the lot since then up to the date of trial. He introduced some improvements on said lot, consisting of a *bodega* with second-hand galvanized iron roofing and a house with nipa roof, both approximately valued at ₱7,000.

It is undisputed that the rentals corresponding to the period from November 1941 to date of trial has not been paid, although, the defendant tendered the payment of rentals corresponding to the period of his occupation but that said tender was refused acceptance by the plaintiffs.

On March 28, 1947, this action was instituted in the Court of First Instance of Misamis Oriental against the defendant Go Ye Pin for the rescission of the contract plus damages, alleging three grounds, to wit:

"1. The defendant refused to recognize his obligation to pay rentals in arrears for the period from November 1941 until the date of the filing of the complaint.

"2. The defendant refused to reconstruct the building that was existing on the lot in question before the war, in violation of the terms of the contract; and

"3. The defendant subleased the remaining portion of said lot to third persons, without the consent of the plaintiffs and appellees, in violation of the terms of the lease contract."

In his answer, the defendant alleges that:

"1. According to the contract, the lessee was not under obligation to construct any determinate kind of building of galvanized iron roofing and of strong materials but was simply given the liberty and discretion to construct any building that he may deem proper on the leased premises, but inspite thereof, the defendant is almost completing plans for the construction of a building of strong materials on said premises;

"2. That there is no provision in the contract prohibiting the sublease of the property in question;

"3. That the defendant exerted efforts to pay rentals in arrears but plaintiffs and appellees refused to accept the payment."

After due trial, the lower court overruled the second and third grounds of the complaint, apply declaring: (a) that under the contract, "the lessee did not obligate himself to construct a determinate big building, like the one built by the former lessee on the lot in question, but he was given the choice to erect any kind of *camarin* or house or building which he may deem proper for his own benefit or for the convenience of his lumber business"; and (b) that there is no provision in the contract of lease, prohibiting the lessee to sublease the lot in question. However, His Honor ruled that the proper action which should have been filed by the plaintiffs is *danshucio* (ejectment) under article 1569 of the Civil Code and considering the present suit as *danshucio* and in view of the admitted fact that rentals from November 1941 to date of filing of this complaint have not been paid, rendered judgment, ejecting the defendant from the premises, the dispositive part of which reads as follows:

"In view of the foregoing considerations, the Court renders judgment ordering the defendant Go Ye Pin to vacate the land in question and to deliver the possession thereof to the plaintiffs; to pay to the latter the sum of nine hundred seventy-five (P975) pesos as rentals from November 1941 up to March 1947, with interest of 6 per cent per annum; and thereafter, to pay to the plaintiffs monthly rental of fifteen (P15) pesos, with interest at 6 per cent per annum thereon, from the date of the filing of complaint until the defendant delivers the possession of the lot in question to the plaintiffs.

"The defendant is entitled to remove or take away from the lot in question, all the improvements that he has introduced therein.

"With costs against the defendant."

From this judgment, only the defendant appealed.

The vital question raised is whether or not the lower court has erred in ordering the ejectment of the defendant from the premises under the provisions of Article 1569 of the Civil Code.

The ejectment decreed in the decision appealed from is predicated solely upon the ground of nonpayment of rentals. Neither the allegations of the complaint nor the prayer thereof seek for the ouster of the defendant on

that ground. What the complaint alleges as to rentals in arrears is as follows:

"That sometime after the nipa hut was constructed the defendant went to Malaybalay to offer to the plaintiffs the payment of rentals for the current month of his occupation, but plaintiffs refused to accept the tender of payment for the reason that (a) said defendant refuse to recognize his obligation to pay the rentals in arrears since 1941, and (b) he refused to undertake to reconstruct the building that existed thereon to come within the term of the contract."

As we see from four corners of this case, the primordial objective of the plaintiffs is to get rid of the present contract, disregarding rents in arrears, because according to them, the building of strong materials constructed on the lot way back in 1940, the ownership of which would, under the terms of the contract, revert to them upon the termination of the lease in 1950, has already been completely destroyed, and that the defendant has not reconstructed the said building but, on the contrary, has built thereon a *bodega* and *barong-barong* which would be of no value to them, even if the ownership thereof would or could legally revert to them upon the expiration of the contract; that defendant has sublet a portion of the lot without the consent of the plaintiffs; and further, because plaintiffs now realize that, under such circumstances coupled with the fact that the lot in front of the demised premises, although smaller in size, is now renting P300 a month, to continue the contract at the meager rental of P15 a month would indeed be a poor bargain for them. Notwithstanding the fact that the court *a quo* has correctly found that the grounds invoked for the rescission were not in truth violations of the contract, while denying the rescission prayed for, granted practically the same relief, but upon an issue not raised in the pleadings. We believed that this was erroneous. (*Limpangco vs. Steamship Co.* 34 Phil., 597)

But, even supposing that this complaint was one of ejectment for nonpayment of rentals under the aforesaid article of the Civil Code, we are, nevertheless, of the opinion that, upon the facts of record, the action cannot prosper.

The unpaid rentals may be divided into two: (1) the rentals from November 1941 to sometime after liberation, when defendant occupied the premises, and (2) the rentals accruing from the date the defendant occupied the premises up to the date of trial. With respect to the unpaid rentals from November 1, 1941 to date of liberation, the same was clearly an obligation of the original lessee, the deceased Carvajal. Why said rentals were not paid as they fell due is not clearly shown in the record. Most probably, because of the innumerable difficulties occasioned by the war days, the plaintiffs who were then residing in Bukidnon

lost contact with Carvajal who was then residing in Misamis Oriental and consequently, did not care to collect the rentals as the fell due. If, as the complaint alleges, the defendant refused to recognized the obligation to pay said rentals, we believe he was right in doing so, as said claim was properly against the estate of his deceased father and not against him personally. The contract of lease is silent as to the place of the payment of the rent. There being no agreement between the parties herein, the place of the payment of the rent is the domicile of the lessee. (Articles 1574, 1171, Civil Code; Gomez et al., *vs.* Ng Fat et al., 43 Official Gazette, 102.) If, therefore, there was any default in the payment of the rentals from November 1, 1941 throughout the Japanese occupation, said default must be attributable not to the fault or neglect of Carvajal but rather to the plaintiffs' omission or neglect to collect the said rentals in the domicile of Carvajal. Moreover, Executive Order No. 32 on Debt Moratorium as amended, in as far as obligations incurred during the enemy occupation are concerned, is still in force and consequently, the enforcement of the obligation to pay the rentals during said period has been suspended. Apart from the foregoing considerations, we find that the preponderant evidence shows that herein defendant did not, in fact, refuse to pay the rentals left unpaid by his father—he simply expressed doubt as to whether he would pay such back rentals in military emergency notes or in the present legal currency, but that, at any rate, he signified his willingness and readiness to pay said rentals should the plaintiffs and appellees so demand him to do, but as stated above, the plaintiffs and appellees appear willing to forego all rentals in arrears provided the contract is rescinded. All these facts point irresistibly to the conclusion that there was no culpable default on the part of either the defendant or his predecessor in interest Carvajal in the payment of the rentals for the period during the enemy occupation.

With respect to the rentals due from the time the herein defendant stepped into the shoes of his deceased father, the evidence shows, that although no demand was ever made upon him, because plaintiffs and appellees did not go to defendant's domicile to collect the said rents, the latter, nevertheless, made efforts as soon as practicable after his occupancy, to locate the whereabouts of the lessors and after some inquiries and believing that plaintiffs-appellees may still be found in their pre-war residence at Malaybalay, Bukidnon, sent to them money orders Nos. 9276, 9277 for the total sum of ₱217.50 to answer for the current rentals, but the plaintiffs and appellees, through their attorney as evidenced by Exhibit 1, returned the money orders to the defendant, stating that plaintiffs-appellees are seeking the rescission of the lease contract

and that they prefer to await the court's decision on the matter before accepting any payment. The plaintiffs' refusal to accept such payment was without justification. If, thereafter, there was no payment tendered by the defendant to the plaintiffs, it was because of the attitude of the plaintiffs and appellees as expressed in the aforesaid Exhibit 1. These facts go to show that, notwithstanding to difficulties of transportation facilities in the early days of the liberation and notwithstanding the fact that according to law (article 1574, 1171, Civil Code) the defendant was entitled to make the payment of the rents at his residence in Cagayan, Misamis Oriental, he made efforts to comply with his own current obligations under the contract, but his tender of payment was refused. We are of the opinion that defendant was not guilty of any culpable breach of the contract during the period of his own occupation and consequently, should not have been ordered ejected from the premises.

"A creditor who without legal justification, informs his debtor that payment of a debt will not be accepted, thereby waives payment on the date when the money will be due, and as a consequence the debtor is, in such case, excused from making a formal tender of money on such date." (*Kapisanan Banahaw vs. Dejarne*, 55 Phil., 338).

"Appellants' default cannot give way to their ejection, since it is attributable in part of plaintiff's omission or neglect to collect. (*Mañalac V. Garcia*, 42 Off. Gaz., 2430). There being no agreement between the parties therein, the place of the payment of the rent to the domicile of the lessees." (Article 1574, 1171, Civil Code; *Gomez et al., vs. Ng Fat et al.*, 43 (Off. Gaz., 102).

In the case of *Kapisanan Banahaw* just cited, the Supreme Court further said:

"And even supposing that his installment of the rent may in fact have been due on March 5, 1929, as the plaintiffs' officers contend, we are nevertheless of the opinion that under the circumstances of this case, such default would not justify the resolution or rescission of the contract. Under the third paragraph of Article 1124 of Civil Code, the Court is given discretionary power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based."

* * * * *

"* * * and this discretionary power on the part of the Court should be exercised without hesitation in a case where a virtual forfeiture of valuable rights is sought."

It is undisputed that Carvajal, the predecessor in interest of the defendant spent in 1940 the sum of ₱14,000 for the construction of the building which was completely destroyed shortly before the liberation and that defendant and appellant himself shortly after occupying the premises as successor of his said father, constructed a *camarin* and house thereon approximately valued at ₱7,000. To now oust the defendant and appellant from the lot in question

without giving him a chance to recover that his father and he himself had spent may amount to a virtual forfeiture of valuable rights.

Considering all the foregoing facts and equitable circumstances surrounding this case, we are of the opinion that the lower court should not have ordered the ejectment of the defendant, but should have exercised the discretionary power granted under the provisions of paragraph 3 of article 1124 of the Civil Code.

Wherefore, the judgment appealed from is hereby reversed, and it is hereby ordered and decreed that: (1) the contract of lease in question is still in full force as between plaintiffs and appellees and defendant and appellant; and (2) in view of the willingness expressed by the defendant and appellant to pay the rentals due from November 1941 up to date of his own occupancy as well as the rentals due during the period of his occupancy, said defendant and appellant pay, once this judgment becomes final, unto the plaintiffs and appellees all the rentals in arrears at the rate of ₱15 a month from November 1941 to date of final judgment with interest thereon at the rate of 6% per annum from date of filing of complaint; and thereafter to pay the stipulated monthly rental of ₱15.00. No special pronouncement as to costs.

Concepcion and Dizon, JJ., concur.

Judgment reversed.

[No. 2233-R. February 16, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. MAGTANGOL LATORRE Y SANTIAGO, defendant and
appellant.

1. CRIMINAL LAW; VIOLATION OF SECTION 2, ACT NO. 2567; EVIDENCE; CORPUS DELICTI CANNOT BE PRESUMED.—The *corpus delicti* cannot be presumed and must be established by evidence independent of the extrajudicial admissions of the defendant (U.S. *vs.* De la Cruz, 2 Phil. 148), a rule intended to guard against conviction upon a false confession (People *vs.* Batangan, 54 Phil., 834; People *vs.* Mauro Cube, 44 Official Gazette No. 7, p. 2276).
2. ID.; SCOPE OF SECTION 2 OF ACT NO. 2567.—Section 2 of Act No. 2567 covers only sales, purchases or receipts in pledge, for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service of the United States, of arms, equipment, ammunition, clothes, military stores, or other property, whether furnished to said men in the army or navy under a clothing allowance or otherwise, provided they had no lawful right to pledge or sell the same. In the case at bar, even assuming that a colored American soldier had unlawfully sold the said iron sheets to appellant, yet, under the circumstances of the case and without proof to the contrary, it can be safely inferred that the alleged 300 pieces of iron sheets said to be U.S. Army

property, which certainly is no part of any soldier's equipment, was not furnished to, but robbed, stolen or otherwise taken by said colored American soldier. In such a case, if appellant, with knowledge of these facts, would have bought the iron sheets in question, he would not be a violator of Section 2 of Act No. 2567, but, at most, an accessory after the crime of robbery or theft of U.S. Army property.

3. *Id.*; *Id.*; ENFORCEMENT OF ACT 2567 AS TO U.S. PROPERTY RIGHTS NO LONGER A FUNCTION OF THE PHILIPPINE REPUBLIC SINCE JULY 4, 1946.—Act No. 2567, enacted on February 3, 1916, was passed by the Legislature when the Philippines were a possession of the United States of America and after the incident that gave rise to the case of *Tan Te vs. Bell*, 27 Phil., 354, (March 28, 1941). Said Act was inspired by the provisions of Section 3748 of the U.S. Revised Statutes, conferring upon United States Army Officers the power to seize military equipment found in possession of others than soldiers, when title had not been legally acquired through the Government of the United States. It is true that the restriction (and punishment) provided in Sec. 2 of Act 2567 is not incompatible with the sovereignty of the Republic of the Philippines, but since the fourth of July of 1946, when the Philippines became a sovereign state entirely separate and independent from the United States, and despite the close and friendly relations still existing between these two countries, it is no longer a function of the government of our Republic to enforce the rights of the U.S. Army covered by said Act, and to consider any violation thereof as a crime against the people of the Philippine Islands. Moreover, Act No. 2567 is a penal law, and it is known that laws of such nature have to be strictly construed.

APPEAL from judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the Court.

I. C. Monsod for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Augusto M. Luciano* for appellee.

FÉLIX, J.:

In the afternoon of January 24, 1947, Magtangol Latorre, a "buy and sell" merchant, was arrested by detectives of the Manila Police Department for having in his possession in a house at Moret St., Sampaloc, Manila, 300 pieces of galvanized iron sheets, believed to belong to the U.S. Army. In the investigation conducted at the police station Latorre declared in a written statement (Exhibit A), which he voluntarily made and subscribed, that at 2:00 o'clock in the afternoon of January 20, 1947, a truck of the U.S. Army with 300 pieces of iron sheets owned by said Army came to said house brought by a colored American soldier who sold them to him for ₱1,500. These iron sheets were confiscated by the police, and on the strength of his own admission, Magtangol Latorre was prosecuted in the Court of First Instance of Manila charged with a violation of section 2 of Act No. 2567 of the Philippine Legislature.

The information, filed on February 11, 1947, reads as follows:

"That on or about the 24th day of January, 1947, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, and feloniously and knowingly purchase for the sum of P1,500 from a member of the United States Forces in the Philippines, the following property belonging to the said Forces, to wit: "300 pcs. of corrugated iron sheets the said member not having the lawful right to sell or dispose of the said property"

After hearing the Court found the defendant guilty of the offense charged and sentenced him to pay a fine of P200 with subsidiary imprisonment in case of insolvency, and to pay the costs. The 300 pieces of iron sheets were forfeited and ordered returned to the owner, the U.S. Army in the Philippines. From this decision the defendant appealed to us and now contends that the lower court erred:

"(1) In finding that the galvanized iron sheets are property of the United States Army;

"(2) In finding that the length of galvanized iron sheets used by the Army is different from those of commercial size;

"(3) In ruling that the accused must prove that the American soldier who allegedly sold to him the galvanized iron sheets was authorized to do so;

"(4) In not finding that the galvanized iron sheets were purchased from a Filipino;

"(5) In not giving probatory value to Exhibit 1;

"(6) In presuming that a person in possession of a thing owned by a government entity must prove the legality of his possession; and

"(7) In condemning on the evidence presented by the prosecution the accused to pay a fine and confiscating the galvanized iron sheets in favor of the United States Army."

The questions raised in this assignment of errors may be brought down to the following propositions: (1) whether or not appellant has bought the 300 pieces of galvanized iron sheets from a U.S. colored American soldier; (2) whether the evidence on record shows that said sheets were the property of the U.S. Army; and (3) in the affirmative case, whether the person that sold them had the lawful right to sell the same.

It is an undisputed fact that Manila detectives found in the possession of appellant 300 sheets of galvanized iron, of the size of 8' by 27½", placed or kept in a house at Moret street, Sampaloc. How the policemen learned of the existence of these sheets in said house, and whether they were seized from appellant by means of a search warrant, the record does not disclose. Latorre and the sheets were taken to the police station and there appellant declared that he had bought those sheets from a colored American soldier who brought them to his place in a U.S. Army truck. This, substantially, is *all* the evidence on

record to prove in this case the *corpus delicti*, for notwithstanding the testimony of the policemen to the effect that they knew that said sheets were U.S. Army property because of their size, which was smaller than those of commercial type, it is admitted that CID agents called by the police to identify the sheets failed to establish that they belonged to the U.S. Army.

Appellant testifying in his behalf admitted that he knew that purchase of U.S. Army property from unauthorized persons was in violation of law, but claimed that he had not bought the sheets from any colored American soldier; that no such soldier had brought to his place in a U.S. Army truck the sheets found in his possession; and that if he declared in that guise in Exhibit A, it was because "while at the police station a man, whom he knew by face and whom he thinks to be a bondsman, approached appellant and told him that if he were asked from whom the iron sheets were bought, to answer that it was from an American negro, and that he (that man) would care for his (appellant's) release, as he would fix it with the secret service."

Though it is very difficult to believe that a "buy and sell" merchant as appellant could so easily fall in that trap and testify to facts which were obviously violatory of the provisions of a penal law, yet the record shows that the very policemen that secured Exhibit A from appellant, openly admitted at the hearing of the case that before said exhibit was prepared there were several other persons in the station with whom appellant could have talked; that immediately after he signed Exhibit A appellant asked detective Julio Ungco the following: "I have already said that I have bought those galvanized iron sheets from an American soldier, why don't you release me now?", to which detective Ungco replied: "I cannot release you because I can file a complaint against you for having bought those iron sheets from an American negro"; that right then appellant protested and disclosed that it was not true that he had bought those galvanized iron sheets from a American negro but from a Filipino, and went on saying that his statements in Exhibit A were made at the suggestion of a person who had talked to him at the station; and that he had at home the "invoice" of the sheets that said Filipino had issued to him.

When the case was submitted to the Fiscal's office, again appellant renewed his statement and informed the investigator that he had in his house the document wherein it appears that he had bought those iron sheets from a Filipino. Detective Ungco then accompanied appellant to his house to get the document in question, and in the presence of the detective appellant took from his wardrobe

and delivered to said detective a document (Exhibit 1), which reads as follows:

"December 19, 1946

"Received from Mr. Magtangol La Torre of 305 Pantaleon St. Mandaluyong, Rizal, the sum of one thousand and five hundred pesos (P1,500) as payment for 300 Pieces of Gal. Iron Sheets, 8' x 27½" x 24.

(Sgd.) JOSEFINO ALCANTARA"

It is to be observed that the controverted iron sheets, which were not identified nor claimed by the U.S. Army had (admittedly) no mark whatsoever, and that no sample was produced in court for examination, though allegedly they were available; so the evidence on the commercial type or U.S. Army type of the iron sheets, assuming that really there was such a distinction, was limited to the testimony of the detective which, certainly, is not the best evidence, nor free from bias.

Considering the evidence on record, can it be said that the *corpus delicti* has been proven in this case? According to American and our own jurisprudence:

"*Corpus delicti* means that a crime has actually been committed and it is composed of two elements: (a) the fact or result forming the basis of the charge, and (b) the existence of a criminal agency as the cause thereof. Ordinarily the accused's connection with the crime is not an element thereof."

"*Corpus delicti* means the body or substance of the crime, and may be defined in its primary sense as the fact that a crime actually has been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The words are sometimes employed with a secondary meaning to indicate the subject of the crime and its visible effect, such as the body of the person murdered or the ruins of the house burned."

"Elements. The *corpus delicti* is a compound fact made up of two things: The existence of a certain act or result forming the basis of the criminal charge, as the occurrence of an injury or loss; and the existence of a criminal agency as the cause of this act or result. As a general rule the connection of accused with the crime, or the identity of its perpetrator, is not an element of the *corpus delicti*, although in some cases accused's agency in the commission of the offense is included as an element thereof, but this makes the *corpus delicti* identical with the whole case of the people."

"Proof Generally. The *corpus delicti* cannot be presumed, but must be established by evidence sufficient to show the commission of a crime. Extrajudicial admissions or confessions of the accused are not, alone, sufficient to establish the *corpus delicti*, but ordinarily may be considered in connection with other evidence in the establishment thereof." (23 C.J.S. 181-2.)

"The *corpus delicti* must be proved, as a general rule, by evidence independent of the confessions of the defendant, especially where the latter may not have been voluntary (or misgiven), as in this case." (U.S. vs. De la Cruz, 2 Phil., 148.)

"A mere naked confession uncorroborated by any circumstance inspiring belief in the truth of the confession is not sufficient to warrant the conviction of the accused for the crime of which he is charged." (U. S. vs. Agatea, 40 Phil., 596.)

Section 2 of Act No. 2567 of the Philippine Legislature, punishing fraud against the United States, reads as follows:

"Whoever shall knowingly sell, purchase or receive in pledge, for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service or Philippine Constabulary, any arms, equipment, ammunition, clothes, military stores, or other public property, whether *furnished* to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than one thousand pesos or imprisoned not more than two years, or both in the discretion of the court."

Now, referring particularly to the case at bar, we declare that the "*corpus delicti*" of said violation of section 2 of Act No. 2567 is made up of the following elements: (1) that the 300 iron sheets in question belong to the U.S. Army (2) that these sheets were *furnished* by said Army to a member thereof who had no lawful right to pledge or sell the same; (3) that despite the lack of such right the member of the U.S. Army to whom said sheets were *furnished* (either under a clothing allowance, or otherwise), actually sold the same; and (4) that appellant *really* bought the sheets from a colored American U.S. soldier *knowing* that they were U.S. Army property and that said soldier was not lawfully authorized to sell the same.

The *mere possession* by appellant of the iron sheets in question without any further proof—admissible and effective—concerning the circumstances of the transaction, the reality of its execution and the ownership of the property involved therein, is evidently insufficient to establish the *corpus delicti* in the case at bar. Exhibit A, even if given due weight and probatory value, would at most show the second element of the two that compose the *corpus delicti*, i. e., the existence of a criminal agency capable of producing the crime, but it would never establish the first, to wit, the realization of an act or result forming the basis of the criminal charge, as the occurrence of an injury or loss, and as indicated before, the *corpus delicti* cannot be presumed and must be established by evidence independent of the extrajudicial admissions of the defendant (*U.S. vs. De la Cruz*, 2 Phil., 148), a rule intended to guard against conviction upon a false confession (*People vs. Bantagan*, 54 Phil., 834; *People vs. Mauro Cube*, 44 Official Gazette No. 7, p. 2276).

But this is not the only reason why a verdict of acquittal would lie in this case. Section 2 of Act 2567 covers only sales, purchases or receipts in pledge, for any obligation or indebtedness from any soldier, officer, sailor or other person called into or employed in the military or naval service of the United States, of arms, equipment, ammunition, clothes, military stores or other public property, whether

furnished to said men in the army or navy under a clothing allowance or otherwise, provided they had no lawful right to pledge or sell the same. In the case at bar, and even assuming that a colored American soldier had unlawfully sold the said iron sheets to appellant, yet, under the circumstances of the case and without proof to the contrary, it can be safely inferred that said U.S. Army property, which evidently is no part of any soldier's equipment, was not *furnished* to, but robbed or stolen by said colored American soldier. In such a case, if appellant, with knowledge of these facts, would have bought the iron sheets in question, he would not be a violator of section 2 of Act No. 2567, but an accessory after the crime of robbery or theft of U.S. Army property.

Finally, we can state that Act No. 2567, enacted on February 3, 1916, was passed by the Legislature when the Philippines were a possession of the United States of America and after the incident that gave rise to the case of *Tan Te vs. Bell*, 27 Phil., 354, (March 28, 1914). Said Act was inspired in the provisions of section 3748 of the U.S. Revised Statutes, conferring upon United States Army officers the power to seize military equipment found in possession of others than soldiers, when title had not been legally acquired through the Government of the United States.

Secretary of Justice Roman Ozaeta in an opinion rendered on June 29, 1946, at the request of Col. Ernest A. Kinde-water, Provost Marshall of the United States Army forces in the Western Pacific, held the following:

"3. Your third query is whether section 2 of Act No. 2567 of the Philippine Legislature will be applicable with respect to the property of the United States Army in the Philippines after July 4, 1946. Being an Act of the Philippine Legislature which has remained in force up to now, it will continue to be in force until the Congress of the Philippines shall provide otherwise. The prohibition by the Philippine Government to anybody from purchasing or otherwise trafficking in properties of the United States Army in the Philippines will not, in my opinion, be incompatible with the sovereignty of the Republic of the Philippines."

We agree with the preceding opinion in so far as it maintains that the restriction (and punishment) provided in section 2 of Act No. 2567 is not incompatible with the sovereignty of the Republic of the Philippines. We would further add that according to our Civil Code:

"ART. 5. Laws are repealed only by other subsequent laws, and neither disuse nor any custom or practice to the contrary shall prevail against their observance."

but we believe that since the fourth of July of 1946, when the Philippines became a sovereign state entirely separate and independent from the United States, and despite the close and friendly relations still existing between these two countries, it is no longer a function of the govern-

ment of our republic to enforce the rights of the U.S. Army covered by said Act, and to consider any violation thereof as a crime against the people of the Philippine Islands. Moreover, Act No. 2567 is a penal law, and it is known that laws of such nature have to be strictly construed.

Wherefore, the decision appealed from is hereby reversed and Magtangol Latorre acquitted of the charge he is prosecuted in this case, with costs *de oficio*. It is so ordered.

Torres, Pres. J., and Endencia, J., concur.

Judgment reversed; defendant acquitted.

[No. 2356-R February 16, 1949]

CRISPINA BACUS, plaintiff and appellee, *vs.* CEBU CEMENT COMPANY, defendant and appellant

1. EMPLOYER AND EMPLOYEE; WORKMEN'S COMPENSATION LAW; "GOING AND COMING RULE"; INAPPLICABLE TO CASE AT BAR; DEATH IN LINE OF DUTY, CONSTRUED.—The "going and coming rule" generally holds that: "Where the person injured is employed to perform service at or in a particular point or upon particular premises, and where the injury claimed to be compensable is inflicted while he is going or returning from his place of employment, or where he has left the place of employment on an errand personal to himself, such injury inflicted under such circumstances is not compensable." (*Enterprises Foundry Co. vs. Industrial Accident Commission of California*, 275 p. 432, 433, 206 Cal., 542; see also 71 C. J., 712). The "going and coming rule" should not be the guiding principle in searching for a just determination of the case at bar: Firstly, because the compensation law in the Philippines should be given liberal interpretation in all cases, so as not to defeat the beneficial purposes for which said law was promulgated. (*Scheider, the Law of Workmen's Compensation*, 2132, 2133; *Afable vs. Singer Sewing Machine Co.*, 58 Phil., 39, 42; *Francisco vs. Consing*, 63 Phil., 354, 360.) In the case at bar, even admitting that when in the morning of the tragic accident the employee left his house, he was to report to work and not to inspect the telephone lines under his care, yet, it being indisputable that when he left his house he brought with him a roll of telephone wire, telephone apparatus, pliers and a bolo, and that at the time of his death he had still on his body said tools, there is a reasonable ground to hold that from the time he left his house, he began to perform his duties, and, consequently, when he died, he was in line of duty, for which the plaintiff, as widow, and her four minor children have right to institute the present action. And if to this we add the fact that at the time of his death, Cabigas did not come from nor was he going on, a personal errand, there is reasonable ground for relaxing the strict doctrine of the "going and coming rule", or for construing it liberally in favor of the plaintiff. (71 C. J., 713.) From the time deceased employee left his house, he began doing a part of his contract of services, for since then he was carrying with him a roll of telephone wire, telephone apparatus, pliers and a bolo, which he usually used for repairing the telephone lines under his charge. And it being undisputed that at the time of his death he had all these tools with him, there

is good ground to hold that, under the scope and purview of our Workmen's Compensation Law, he died in line of duty, or was at least engaged in doing part of his contract of services, and therefore his death is compensable under said law.

2. PLEADING AND PRACTICE; ANSWER; AMENDMENT OF ANSWER AFTER TRIAL RESTS IN SOUND DISCRETION OF COURT.—When during the trial of the case the lawyer's petition to amend his answer was overruled, he should not have rested his case; instead, he should have procured the suspension of the trial and secure leave of the court to amend the answer. Having failed so to do, the trial court was justified in rejecting said motion to amend when the same was presented after the trial of the case, for being late; and although, in the proper exercise of its discretion, the lower court could have allowed the motion to amend, since the court, before or even after judgment, can permit any party to amend his pleadings, in the present case, the trial court did not abuse its discretion in rejecting defendant's motion to amend the answer, for at the time it was presented, the parties had already rested their case, and the allowance of said motion would necessarily cause injustice or at least unfair surprise upon the party plaintiff.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Assistant Corporate Counsel ¹*Federico C. Alikpala* for appellant.

Mariano M. Florido for appellee.

ENDENCIA, J.:

This is an action brought to court under the Workmen's Compensation Act.

It appears that on May 16, 1947, Isidro Cabigas, husband of the plaintiff, was a lineman in charge of the telephone lines of the defendant running from Uling Coal Mines up to its cement factory established in the municipality of Naga, Province of Cebu. In the morning of that day, Isidro Cabigas left his house—which was within the place of the telephone lines under his charge—bringing with him a roll of wire, a telephone apparatus, pliers and a bolo needed for repairing the telephone line. He rode in a truck hired by the defendant corporation, and before arriving at his office he met an accidental death. The officers of the defendant corporation were notified of said death, and Mr. Gapud, the Superintendent of the Cement Factory, repaired at the place of the accident and could still see Isidro Cabigas with the roll of wire, telephone apparatus, pliers and bolo. Before his death, Cabigas' field work was along the telephone lines mentioned above, the maintenance of which was his principal charge. As telephone lineman, the deceased was expected to begin his work at seven o'clock in the morning every working day. On May 16, 1947, at 7:00 a. m., the deceased started from his house either to

make his usual round of inspection of the telephone lines under his care, or to go directly to his office to receive instructions from his immediate superior. Unfortunately, half an hour later, the truck where he rode fell into a ditch, and three of its passengers were killed outright and one wounded. One of those killed was the deceased Isidro Cabigas. At the time of his death, he was lawfully married to plaintiff Crispina Bacus, and his legitimate children, surnamed Cabigas, who were not made parties to the case, were Felix, 21 years old; Nicetas, 18 years old; Casimiro, 15 years old; Francisco, 11 years old; Ruperto, 7 years old; and Catalina, 5 years old.

On June 25, 1947, the plaintiff, as widow of the deceased Cabigas, filed a formal claim for compensation under the Workmen's Compensation Act with the defendant company, but the latter refused to grant such claim and thus the plaintiff had to institute the present action.

Answering the complaint, the defendant made specific denials of all the allegations therein averred, except paragraphs 2, 3 and 9 thereof, and by way of special defense pleaded that "plaintiff's claim does not come within the provisions and requirements of the Workmen's Compensation Act, as the deceased Isidro Cabigas did not die in line of duty."

On October 14, 1947, the case was called for hearing, the parties appeared with their attorneys and after plaintiff and her son Felix Cabigas had testified in support of the complaint, the plaintiff rested the case. Thereupon, the defendant presented its evidence, and then tried to prove that Isidro Cabigas' death was due to his notorious negligence, to which plaintiff's counsel interposed objection. The trial court then ruled that unless the answer is properly amended, the defendant had no right to establish such defense. The defendant, instead of asking for the postponement of the case in order to amend the answer and plead the defense of notorious negligence, continued with the trial of the case, and, after presenting its evidence, rested the case, asking the court to be given three days within which to file its arguments in support of his contention that it was entitled to file an amended answer. This caused the trial court to make of record the following:

JUZGADO:

"Lo que debe usted hacer, compañero Sr. Vamenta, es esto: Presente usted una moción para que el Juzgado le permita a presentar una contestación enmendada en la que usted podría incluir todos sus argumentos y las autoridades que sostienen los mismos, y que usted notificará de esto a la parte contraria, debiendo pedir en la misma moción, la fecha en que esta moción de usted debe ser considerada por el Juzgado."

On October 14, 1947, defendant filed a so-called "Motion to Amend the Answer of Defendant", the averments of which are *verbatim* as follows:

"1. That the herein defendant at the hearing of this case on October 9, 1947 manifested its claim to submit 'Exhibit 1' which is the Memorandum signed by Mr. H. A. Gapud, Mine Superintendent, Uling Coal Mine, addressed to the employees and laborers of said mine dated November 9, 1946, *Prohibiting and warning* all employees and laborers of Uling Coal Mine *not to use, ride or board on any of the trucks of Mr. Moises Selma, a private contractor, to haul coal from Uling Coal Mines to the Plant at Tina-an, Naga, Cebu.*

"2. That the attorney for the plaintiff objected to the presentation and submission of 'Exhibit 1' to the court on the ground that this documentary evidence seeks to prove the negligence of the claimant, Isidro Cabigas, now deceased and same was not alleged in our Answer.

"3. That the defendant corporation, Cebu Portland Cement Company, thru its attorney hereby insist that under the provisions of our new Rules of Court, the amendment of the answer at any pleading, is permissible and legal and defense of negligence on the part of the deceased, Cabigas, which, if proven upsets any claim for compensation under the Workmen's Compensation Act (Sec. 4 (3) is subject to the discretion of the Court. The special defense of 'notorious negligence' which we did not aver as special defense in the answer is due to our contention that the same is deemed included under par. II of our Answer dated August 5, 1947, which reads as follows:

'That as special defense the defendant contends that the plaintiff's claim does not come within the provisions and requirements of the Workmen's Compensation Act as the deceased, Isidro Cabigas, did not die in line of duty.

* * * * *

"4. That according to the provisions of our New Rules of Court, Sec. 13, entitled 'amendment', 'The information or complaint may be amended, in substance or form without leave of court, at any time before the defendant pleads; and thereafter and during the trial, as to all matters of forms, by leave and at the discretion of the court, when the same can be done without prejudice of the rights of the defendant.'

* * * * *

5. That the herein defendant contends, that the submission of 'Exhibit 1' in this stage of the proceedings is essential to both parties so as to determine whether the Cebu Portland Cement Company should or should not pay for the damages and salaries of the claimant as provided for in the Workmen's Compensation Act. Since the defendants principal defense in this case are based in two grounds, namely: (1) that the deceased Isidro Cabigas did not die in line of duty or from any accident arising out of or in the course of his employment or contract any illness directly caused by such or the result of the nature of such employment, and (2) that the injuries sustained by Isidro Cabigas resulting in his death was caused by the notorious negligence of claimant or the plaintiff in this case.

"6. That the defendant submitted both documentary and testimonial evidence to prove that the deceased did not die in line of duty during the trial of October 9, 1947. With reference to the affirmative defense of notorious negligence of Cabigas 'Exhibit 1',

if accepted by the court as evidence is decisive to prove our allegation of negligence under Sec. 4 (3) of the Workmen's Compensation Act. We found it necessary to aver as a separate affirmative defense the negligence of the deceased Cabigas inasmuch as this is included under the second allegation of special defense (II, Answer) which is explained under No. 3 of this motion.

* * * * *

On October 24, 1947, plaintiff, through counsel, filed her "Opposition to Defendant's Motion to Amend his Answer" on the ground that under Section 4, Rule 17, of the Rules of Court, said motion is not permissible because the defendant went ahead with the trial and rested the case and that said motion was not presented so as to conform the pleadings with the evidence adduced during the trial, and prayed that said motion be overruled. On October 25, 1947, the trial court overruled defendant's motion to amend his answer. Later on, the decision appealed from was rendered, the dispositive part of which is as follows:

"For the foregoing, it is hereby decreed that the plaintiff and her children Ruperto Cabigas, 7 years old, and Catalina Cabigas, 5 years old, are entitled to receive 50% of the P3 daily wage referred to and which the defendant is required to pay to them every week for the period of not more than 208 weeks, or until Crispina Bacus shall have contracted second marriage, in which case her two children above mentioned shall be the only beneficiaries of the compensation fixed herein, but in the proportion of 30% instead of 50%, for not more than 208 weeks in all, pursuant to section 8 of Act No. 3428 as amended by Act No. 3812 and Commonwealth Act No. 210."

On this appeal, defendant claims that the trial court erred:

"I. In not allowing the defendant-appellant to amend its answer and, having so amended its answer, to allow the defendant-appellant to present evidence of the notorious negligence of the deceased Isidro Cabigas;

"II. In finding that Isidro Cabigas was engaged in the performance of his duties as a telephone lineman of the defendant-appellant at the time of the accident;

"III. In holding that the accident arose out of and in the course of the employment of Isidro Cabigas;

"IV. In holding that the plaintiff-appellee and her children are entitled to compensation under the Workmen's Compensation Act."

Upon the facts of the case and the assignment of errors, we find that the controversy between the parties may be narrowed to the following questions: (1) has plaintiff right to the compensation sought for in the complaint? and (2) did the trial court commit a reversible error when under date of October 14, 1947, it denied defendant's motion to amend?

With regard to the first question, the main issue that this Court has to determine is whether on May 16, 1947, Isidro Cabigas died in line of duty as an employee of the defendant corporation. Section 2 of Act No. 3428, other-

wise known as the Workmen's Compensation Law, as amended, provides:

"SEC. 2. *Grounds for compensation.*—When an employee suffers a personal injury from any accident *arising out of and in the course of his employment*, or contracts any illness directly caused by such employment or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified." (Italics ours.)

Defendant contends that under the aforequoted provisions of law, Isidro Cabigas did not die in the course of his employment and therefore plaintiff has no cause of action against the defendant. It is contended that it was shown that like any other employee of the company, the deceased was supposed to report every day to the office, at seven o'clock in the morning, to record his arrival in the time record and thereafter to present himself to Ulpiano Manago, his immediate superior, for formal instructions as to the particular work he should perform that day; that on May 16, 1947, the deceased failed to report at the office, and according to the regulations of the defendant company any employee who failed to report is considered as absent; and that on May 16, 1947, the deceased was a lineman at large and was not assigned to any definite line. Under these facts, testified to by Honesto Gapud and Ulpiano Manago, defendant contends that the deceased was not in line of duty when he met his accidental death.

As against this contention, plaintiff claims that the evidence of record conclusively shows that before the tragic accident, the deceased left his house fully equipped with a roll of wire, telephone apparatus, pliers, and a bolo which he used to utilize in the performance of his duties as telephone lineman of the defendant; that immediately after the accident, Mr. Gapud, the superintendent of the defendant corporation, went to see the dead body of Isidro Cabigas, and still found said body with said roll of wire, telephone apparatus, pliers and bolo; and that in view of these facts, Isidro died in the course of his employment.

Now, under the foregoing facts, which each party claims to have substantiated, and the aforequoted section 2 of our Workmen's Compensation Law, should the deceased be considered or not as having died in line of duty? In answering this question, we find that in the conflicting theories sustained by the parties, there seems to be no dispute about the following facts: (1) that on the occasion under consideration, Cabigas was on his way to report to work; (2) that when he left his house he brought with him the aforementioned articles: roll of wire, telephone apparatus, pliers and a bolo, all of which were his necessary tools for his work as a lineman; and (3) that when he met his death, he had with him all these tools. Having

these facts in mind, is there any ground to hold that Isidro Cabigas died in line of duty? Evidently, his case falls within the "going and coming rule" whereby it is generally held that: "where the person injured is employed to perform service at or in a particular point or upon particular premises, and where the injury claimed to be compensable is inflicted while he is going or returning from his place of employment, or where he has left the place of employment on an errand personal to himself, such injury inflicted under such circumstances is not compensable." (*Interprises Foundry Co. vs. Industrial Accident Commission of California*, 275 P. 432, 433, 206 Cal. 562; see also 71 C. J. 712, footnote and numerous cases therein cited.) Were we to apply strictly this doctrine to the case at bar, there seems no question that plaintiff has no right of action against the defendant. However, we find that the "going and coming rule" should not be the guiding principle in searching for a just determination of the case at bar: Firstly, because the compensation law in the Philippines should be given liberal interpretation in all cases, so as not to defeat the beneficial purposes for which said law was promulgated, as it was so ruled in the case of *Francisco vs. Consing* (63 Phil., 354, 360), where our Supreme Court held:

"On the other hand, 'in addition to cases holding that workmen's compensation acts should be given interpretation in favor of the employee, a number of cases held that the acts should or must be construed fairly, reasonably, or liberally, in favor or for the benefit of employees or their dependents, all doubts as to the right to compensation being resolved in their favor; and there are statutory provisions for a liberal construction in favor of employees injured (71 C.J., 351-353.) 'The intention of the legislature is to be gathered from the necessity or reason of the act and the meaning of words is to be derived from consideration of the whole act, and doubts respecting the rights to compensation should be resolved in favor of the employee or his dependents.' (Schneider, *The Law of Workmen's Compensation*, 2132, 2133.)"

In the case at bar, even admitting that when in the morning of the tragic accident Cabigas left his house, he was to report to work and not to inspect the telephone lines under his care, yet, it being indisputable that when he left his house he brought with him a roll of telephone wire, telephone apparatus, pliers and a bolo, and that at the time of his death he had still on his body said tools, there is a reasonable ground to hold that from the time he left his house, he began to perform his duties, and, consequently, when he died, he was in line of duty, for which the plaintiff, as widow, and her four minor children have right to institute the present action.

Defendant cites the case of *Afable vs. Singer Sewing Machine Co.* (58 Phil., 39, 42), in support of his contention

that plaintiff has no right of action against the company, and quotes therefrom the following:

"* * * The employer is not an insurer against all accidental injuries which might happen to an employee while in the course of employment, and as a *general rule an employec is not entitled to recover from personal injuries resulting from an accident that befalls him while doing so or returning from his place of employment, because such an accident does not arise out of and in the course of his employment.*" (Italics ours.)

We find however that the defendant did not entirely quote the whole paragraph of the decision from which the above quotation was taken, for said paragraph continues as follows:

"* * * We do not of course mean to imply that an employee can never recover for injuries suffered while on his way to or from work. *That depends on the nature of his employment.*" (Italics ours.)

As could be seen, in the case of *Afable vs. Singer Sewing Co.*, the Supreme Court has also ruled that, depending upon the nature of employment, an employee may in some cases recover indemnity for injuries suffered while on his way to or from his work. And we believe that the present case is one of those in which the widow of the deceased may claim for compensation under the Workmen's Compensation Law, because, due to the nature of the employment of the deceased and to the fact that he was going along the place of his daily toils, there is enough ground for the conclusion that at the time of his death he was in line of duty.

Moreover, the case of *Afable vs. Singer Sewing Co.* has no controlling effect on the case at bar, for the facts of that case differ entirely from those of the instant case. In that case, the employee, Madlangbayan, was a collector for the Singer Sewing Co. in the district of San Francisco del Monte, outside the limits of the city of Manila, and he was supposed to be residing in that district according to the records of the company. He moved however his residence to Teodora Alonso Street in Manila without notifying the company, and when he was returning home after making some collections in San Francisco del Monte and while he was at the corner of O'donnell and Zurbaran streets, in the city of Manila, his bicycle was run over and he was fatally injured. From the foregoing, it could be readily seen that when Madlangbayan suffered the accident, he was not going to the Singer Sewing Co. to comply with his duties, or to be more exact, to deliver the amount collected, for he was then going to his new residence, the change of which he had not notified the Singer Sewing Co. In the case at bar, it is at least admitted by the defendant that when the deceased Cabigas suffered the accident he was on his way to report to duty, and that at that time he had with him all the tools he needed for fulfilling his duties. And if to this we add the fact that

at the time of his death, Cabigas did not come from, nor was he going on, a personal errand, there is reasonable ground for relaxing the strict doctrine of the "going and coming rule", or for construing it liberally in favor of the plaintiff. Furthermore, the present case resembles that of a teacher of the Elementary School of Sibonga, Cebu City, wherein on October 28, 1946, the Secretary of Justice rendered in connection with the "going and coming rule," the following opinion:

"Opinion is requested as to whether Miss Catalina Alesna, a teacher at the Sibonga Elementary School, Cebu City, who was injured in the left knee on her way thither in the morning of March 5, 1946, can claim benefits under Sec. 699 of the Revised Administrative Code. It appears that the road was very slippery, rain having fallen the night before. Not wishing to walk on the muddy portion of the road, Miss Alesna attempted to reach the grassy side thereof and in so doing fell on her knees, the fall being harder upon her left knee because she was carrying many books on her left arm. She claimed that it was necessary for her to carry the books to and from the school everyday, it not being safe to leave them in her room in the school building. As a result of the fall, she sustained a compound comminuted fracture of the left patella which necessitated her hospitalization. According to the certificate issued by the medical officer of the Southern Islands Hospital dated August 9, 1946, where she was confined, Miss Alesna would be unable to walk 'safely' till about two months from said date.

"Inasmuch as the petitioner was injured while on her way to school, it would seem at first blush that her claim for compensation under section 699 of the Administrative Code would be barred by the familiar 'coming and going rule' which holds that harm sustained by an employee while going to and from his work is not compensable. (71 C. J. P. 712 et seq.) But, 'on the other hand it is held that injuries which occur to a workman while going to or from work may be compensable where it appears that the employee is at the time of such injuries engaged in doing an act which he is definitely charged with doing as a part of his contract of service or under the express or implied direction of his employer.'" (71 C. J., 713.)

In the light of this opinion, which we make our own, for it is at least applicable by analogy to the case at bar, it would be considered that from the time the deceased Cabigas left his house, he began doing a part of his contract of services, for since then he was carrying with him a roll of telephone wire, telephone apparatus, pliers and a bolo, which he usually used for repairing the telephone lines under his charge. And it being undisputed that at the time of his death he had all these tools with him, there is good ground to hold that, under the scope and purview of our Workmen's Compensation Law, he died in line of duty, or was at least engaged in doing part of his contract of services, and therefore his death is compensable under said law.

With regard to the alleged error of the trial court for having overruled the defendant's motion to amend his

answer, it appears that said motion arose from an incident which occurred during the trial of the case. The record shows that after the plaintiff had rested her case, and while the defendant was presenting its evidence, the defendant tried to show that the deceased Cabigas was notoriously negligent. Plaintiff objected to it on the ground that such defense was not pleaded specifically in the answer. The defendant retorted that said defense of notorious negligence was included in their special defense that plaintiff's claim did not come within the provisions of the Workmen's Compensation Law, as the deceased Isidro Cabigas did not die in line of duty. Then the court overruled defendant's motion to amend the answer to permit the introduction of evidence on the deceased's notorious negligence. Notwithstanding the adverse ruling of the court, the defendant did not ask for the postponement of the case so that he could properly amend the answer and allege therein the defense of notorious negligence, but, instead proceeded with the trial of the case, continued introducing evidence and then rested the case. And only after the trial was over did he present his motion to amend the answer. From the foregoing, it could be seen that defendant's counsel has been somewhat negligent in the protection of defendant's rights. When during the trial of the case his petition to amend his answer was overruled, he should not have rested his case; instead, he should have procured the suspension of the trial and secure leave of the court to amend the answer. He failed to do so, hence the trial court was justified in rejecting said motion to amend when the same was presented after the trial of the case, for being late; and although, in the proper exercise of its discretion, the lower court could have allowed the motion to amend, since the court, before or even after judgment, can permit any party to amend his pleadings, in the present case, we find that the trial court did not abuse its discretion in rejecting defendant's motion to amend the answer, for at the time it was presented, the parties had already rested their case, and the allowance of said motion would necessarily cause injustice or at least unfair surprise upon the party plaintiff.

The trial court adjudicated in favor of the plaintiff 50 per cent of the ₱3 daily wage of the deceased for a period of not more than 208 weeks or until Crispina Bacus shall have contracted marriage, in which case the two children shall only be the beneficiaries but only in the proportion of 30 per cent instead of 50 per cent for not more than 208 weeks in all. The children of the deceased under eighteen years old at the time of his death had been proven to be four (4) and not two (2). Accordingly, the compensation to the widow should be 60 per cent instead of 50 per cent

of the daily wage of the deceased, in accordance with paragraph (b), section 8 of Act 3428, as amended. Therefore, the decision should be amended, as just indicated.

Wherefore, and with the above modifications, the decision appealed from is hereby affirmed, without pronouncement as to costs.

Torres, Pres. J., and Felix J. concur.

Judgment modified.

[No. 2439-R. February 19, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. DOLORES SAGUN Y HERNANDEZ, defendant and appellant.

MUNICIPAL ORDINANCE; ITS ENACTMENT IS LEGAL ALTHOUGH THERE EXISTS A STATE LAW ON THE SAME SUBJECT.—Section 822 of the Revised Ordinance of the City of Manila is not illegal although the offense that it penalizes is already covered by the Revised Penal Code, because its enactment is clearly embraced within the police power of the City, more specifically its power to enact ordinances necessary and proper for the promotion of the morality and general welfare of its inhabitants [Sec. 2444, par. (ee), Revised Administrative Code]. There is no prohibition against a municipality and the State both penalizing an offense. If the charter of a municipality fully authorizes the adoption of an ordinance upon a particular question, for the purpose of protecting the peace and good order of the municipality, an ordinance adopted in strict accordance with said charter provisions is valid, even though there is a state law existing upon the same subject, regulating the same question. The general doctrine is supported by the weight of judicial authority that an act may be made a penal offense under the statutes of the state, and further penalties may be imposed for its commission or omission by municipal ordinance (*U.S. vs. Joson*, 26 Phil., 1, Syllabus). Besides, section 1, paragraph 20, Article III, of the Constitution of the Philippines, which provides that "if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act," implies that no prohibition exists against two instrumentalities penalizing the same offense.

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

Lauro O. Sansano for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Federico V. Sian* for appellee.

LABRADOR, J.:

On September 11, 1947, at about half past two in the afternoon, a squad of policemen of the City of Manila raided the house known as No. 1326 Interior, Rizal Avenue, Manila. They were provided with a search war-

rant issued by Judge Natividad Almada of the municipal court. The said house had been previously raided on various occasions and prostitutes were found therein. The house had three apartments, A, B, and C, and the policemen divided themselves into three groups, each group raiding one apartment. Sergeant Agatona Vuela headed the group that raided apartment A, and her companions were policeman Juan Paralejas, Sergeant Inspector Susana Ganibe, and Patrolman Valente.

As the door of apartment A was closed and nobody would open it, the raiding party crushed against the door on the ground floor, and in that manner the policemen were able to get in. Once inside Paralejas rushed up to the second floor, followed by Sergeant Vuela, where, upon seeing the door of the two rooms also closed, he also crushed against it and it opened. He entered the room followed by Sergeant Vuela. Once inside the room they saw a woman putting her chemise on and a man sitting on the right side of a bed in the room. They immediately looked around for evidence and saw that the man's penis still had a prophylactic sheath (condon) on, which the man immediately took off and threw away under the bed. Paralejas picked it up and noticed that it was still wet with a sticky substance. Sergeant Vuela took the prophylactic sheath and wrapped it. Paralejas asked him why he was in the room, and he answered that he was there for sexual intercourse, paying the defendant therefor. He did not know the name of the woman nor did he disclose his own name. So both man and woman were brought to the police station, where Paralejas subjected the man to questioning and Sergeant Vuela, the woman.

At the trial in the court below Paralejas, Sergeant Vuela, and Susana Ganibe testified, and they identified defendant-appellant as the woman whom they caught in apartment A, together with the man who had used her. The prophylactic sheath (condon) was also introduced in evidence. Defendant-appellant admitted that the police raided the apartment in question, but she denied having been caught with a man, stating that when the place was raided, she was cleaning the room. She further declared that she is a modiste, earning around ₱60 a month; that on the day of the raid she had been in the house already for three days. She introduced no one to corroborate her denials or her testimony.

On the basis of the above evidence the trial court found the defendant-appellant guilty of a violation of section 822 of the Revised Ordinance of the City of Manila, as charged in the information, and sentenced her to suffer four (4) months of imprisonment and to pay the costs. It is against this decision that this appeal is prosecuted.

It is contended on this appeal that the evidence is insufficient to justify the findings of the trial court that de-

fendant-appellant is a common prostitute. The evidence shows that the appellant was surprised alone in a private bedroom with a man not her husband, and not even an acquaintance, at a time when she was just putting on her chemise, without any explanation given by her why the man was found with her, and that a prophylactic sheath (condon) was found in the room still wet with a sticky substance. To contend that under such circumstances she was engaged in a lawful occupation is to shut our eyes to the naked truth. The appellant claims she is a modiste with a modest income, and that she is married to a driver who earns quite a decent salary. She did not present any witness or document to confirm her claim. Her counsel claims that this is convincing evidence. Not every assertion of a witness is entitled to be believed. It must be supported by cold facts and circumstances. Under those in which defendant-appellant was surprised by the police, no reasonable conclusion can be arrived at other than that she was not engaged in a lawful occupation.

Counsel for appellant further claims that the search warrant was no authority for the police to arrest appellant. The search warrant was only an authorization to enter the house. The arrest was effected because the appellant was caught in *flagrante*.

He also contends that section 822 of the Revised Ordinance of the City of Manila is illegal, because the offense that it penalizes is already covered by the Revised Penal Code and because the city is not expressly authorized to punish it. In answer it must be stated that the enactment of the ordinance is clearly embraced within the police power of the city, more specifically its power to enact ordinances necessary and proper for the promotion of the morality and general welfare of its inhabitants [Sec. 2444, par. (ee), Revised Administrative Code]. As to the fact that the offense is also covered by the Revised Penal Code, it must be stated that there is no prohibition against a municipality and the State both penalizing an offense. If the charter of a municipality fully authorizes the adoption of an ordinance upon a particular question, for the purpose of protecting the peace and good order of the municipality, an ordinance adopted in strict accordance with said charter provisions is valid, even though there is a state law existing upon the same subject, regulating the same question. The general doctrine is supported by the weight of judicial authority that an act may be made a final offense under the statutes of the state, and further penalties may be imposed for its commission or omission by municipal ordinance (*U. S. vs. Joson*, 26 Phil., 1, Syllabus). Besides, section 1, paragraph 20, article III of the Constitution of the Philippines, which provides that "if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another

prosecution for the same act," implies that no prohibition exists against two instrumentalities penalizing the same offense.

Wherefore, we hereby affirm the judgment appealed from, with costs against the appellant. So ordered.

Paredes and Barrios, JJ., concur.

Judgment affirmed.

[No. 1272-R. Febrero 21, 1949]

POTENCIANA FRANCISCO, demandante y apelada, *contra*
CONSOLACIÓN ALBERTO y PEDRO ENRÍQUEZ, demandados
y apelantes.

PRUEBAS; DEPOSICIÓN TOMADA ANTE UN NOTARIO PÚBLICO QUE LUEGO SE HACE ABOGADO EN APELACIÓN DE LA DEPONENTE, ES ADMISIBLE COMO PRUEBA.—Los abogados L & L son los que iniciaron este asunto y lo llevaron hasta su terminación en el Juzgado de origen; pero en este Tribunal fueron sustituidos por el abogado F, que fué el notario ante quien se tomó la deposición Exhíbito C. Los abogados de los apelantes objetan en esta instancia, por primera vez, la validez y admisibilidad, como prueba, de la misma deposición, Exhíbito C, alegando como fundamento que F tenía interés en esta causa como abogado de la demandante, que sólo se supo al registrar su comparecencia ante este Tribunal de Apelaciones, por la apelada. El record, sin embargo, no proporciona dato alguno que demuestre interés de parte de F, como abogado de la demandante, durante la tramitación de esta causa en el Juzgado *a quo*. Dicha deposición es admisible como prueba. (Welborne et al., *v. Dawning*, 11 S. W. 501, 502; 6 Ann. Case, 611; Missouri, K. & T. Ry. Co. *v. Byas*, 29 S. W. 1120.)

APPEAL from a judgment of the Court of First Instance
of Camarines Sur. Surtida, J.

The facts are stated in the opinion of the court.

Victorino L. Ojeda for appellants.

Abel G. Flores for appellee.

DE LA ROSA, M.:

Potenciana Francisco pide que el documento de venta, que otorgara el 19 de mayo de 1944 a favor de Consolación Alberto y Pedro Enríquez, de las tres parcelas de terreno, de 46 áreas y 74 centiáreas, 53 áreas y 7 hectáreas, 18 áreas y 70 centiáreas de extensión superficial, respectivamente, descritas en su demanda se declare nulo y sin valor, por haber sido obtenido por los demandados mediante fraude, engaño y aprovechándose de su enfermedad.

En su contestación, los demandados niegan específicamente que haya mediado fraude en la venta de las fincas cuestionadas, afirmando por el contrario que el traspaso de las mismas a su favor se ha hecho mediante consideración justa.

Después de aportadas por las partes sus pruebas, el Juzgado *a quo* dictó esta sentencia:

"Wherefore, this Court hereby renders judgment in favor of the plaintiff and against the defendants declaring null and void and of no effect the deed of sale signed by the plaintiff on May 19, 1944, duplicate copies of which are Exhibits 1 and 4; ordering the plaintiff to pay the defendants the present equivalent in Philippine currency of P1,154.00 of Japanese military notes to be fixed in the manner suggested in the preceding paragraph or should the parties fail to agree on its value, to suspend its payment until the necessary legislation is approved by Congress, and to pay the costs of this action." (Pieza de Excepciones p. 15.)

Contra este fallo, los demandados se alzaron para ante este Tribunal, y en su alegato relacionan estos errores:

I

"The lower court erred in admitting the deposition of the plaintiff-appellee Potenciana Francisco.

II

"The lower court erred in finding that the deed of sale Exhibit A was signed by the plaintiff-appellee in the belief that it was a mere partition between herself and her niece Consolacion Alberto, defendant-appellant herein.

III

"The lower court erred in finding that because the document appears to have been executed before a notary public in Calabanga, while in fact made in Naga, constituted a ground for annulment of the contract.

IV

"The lower court erred in not considering the amount paid by defendants-appellants as the consideration of the deed of sale Exhibit A.

V

"The lower court erred in finding that there was no consent on the part of the plaintiff-appellee to the sale of the properties described in the deed of said Exhibit C".

PRIMER ERROR

Como Potenciana Francisco, por su debilidad debida a su avanzada edad de mas de 90 años, no podía comparecer en la vista de este asunto ante el Juzgado, se autorizó la toma de su deposición, que se hizo ante el abogado y Notario Público Abel G. Flores, en 11 de febrero de 1946, con la asistencia de los abogados Luntok & Luntok de la demandante, y sin la de los abogados Frila, Ojeda y Moll de los demandados, no obstante la notificación que al efecto se les sirvió. En la vista, dicha deposición, que se marcó como Exhíbito C. fué admitida sin objeción de parte.

Los abogados Luntok & Luntok son los que iniciaron este asunto y lo llevaron hasta su terminación en el Juzgado de origen; pero en este Tribunal fueron sustituidos por el abogado Abel G. Flores que fué el notario ante quien se tomó la deposición Exhíbito C. Los abogados de los apelantes objetan en esta instancia, por primera vez, la validez y admisibilidad, como prueba, de la misma

deposición Exhíbito C, alegando como fundamento que Abel G. Flores tenía interés en este causa como abogado de la demandante, que sólo se supo al registrar su comparecencia ante este Tribunal de Apelaciones, por la apelada. El record, sin embargo, no proporciona dato alguno que demuestre interés de parte de Flores, como abogado de la demandante, durante la tramitación de esta causa en el juzgado *a quo*.

Similares cuestiones han sido resueltas, a saber:

“* * * A motion was made to suppress the deposition of John Dawning, Sr., because the notary public who took it afterwards appeared as an attorney for him in the case. It does not appear that he was the attorney of the defendant when he took the deposition, and the court overruled the motion on the ground that it was made to appear that he did not become an attorney in the cause until after the deposition was taken. There was no error in overruling the motion. Welborne et al., *vs.* Dawning, 11 S. W. 501, 502.

“* * * In order that this objection may have any force the commissioner must be interested as attorney at the time of taking the deposition. The fact that he is subsequently retained by a party is not a ground for suppressing the deposition. * * *” 6 Ann., Case 611.

“* * * After the plaintiff had testified in his own behalf, defendant offered to read his deposition taken upon interrogation previously propounded by defendant in order to contradict some of his statements made on the stand. This deposition was excluded, on the ground that it had been taken by an attorney of the defendant. At time the deposition was taken, the notary who took it, and who was also an attorney at law, represented defendant in some causes in the justice court of Harris county and in the district and county courts of adjoining counties, but had no connection with this case, nor with any other cases pending the county court of Harris county, and knew nothing of this case or of its facts. He was subsequently employed to represent defendant in this case. Under decisions in *Burton vs. Railroad Co.* 61 Tex. 529, and *Welborne vs. Dawning*, 73 Tex. 530, 11 S. W. 501, the officer was not disqualified * * *” *Missouri, K. & T. Ry. Co. vs. Kyas* 29 S. W. 1122.”

SEGUNDO ERROR

Hacia el noviembre de 1943, Consolación invitó a Potenciana que se trasladara a su casa, sita en el barrio de Tinago, del municipio de Naga, Camarines Sur, para restablecerse de la enfermedad que padecía. Porque eran parientes cercanos, pues Consolación es hija de una hermana de Potenciana, ésta se trasladó a la casa de aquélla, y en ella se quedó hasta el mayo de 1945, después de la liberación. Como de los achaques de la vejez no se repone, Potenciana continuó enferma en la casa de Consolación, y en su postración de la ancianidad, se obtuvo el otorgamiento del documento de venta Exhíbito A, mediante la representación de que el mismo era un contrato de repartición. Entre Potenciana y Consolación había propiedades comunes, heredadas de sus ascendientes, que fueron objeto de la repartición Exhíbito 10; más, como no se habían puesto mo-

jones, que físicamente las dividen y separen las porciones correspondientes a cada una, no era extraño que Potenciana, fiándose en Consolación, que la acogiera en su casa, firmara el documento de venta Exhibit A, sin cerciorarse previamente de su contenido; pero, tan pronto como se enterara que lo que contenía es un traspaso de las tres fincas en litigio, inició este asunto, para anularlo. Pilar Gómez, hija de Potenciana, declaró que al saber el otorgamiento del Exhibito A, se vió y abocó con Consolación el asunto:

"Q. What did she tell you?—A. She told me that after the document had been prepared she let the old woman sign the document purporting to be a partition of the land in order that Potenciana Francisco would sign the said document.

"Q. But did she tell you as to the truth of the document?—A. Yes, sir. He said: 'I told her to sign the partition because if I told her to sign a document the old woman would not sign it.'

"Q. What do you mean by that document which you have been speaking about.—A. That document that I mentioned here is the document of the deed of sale in favor of Consolacion." (T. n. t. p. 7, tomadas en septiembre 17, 1946.)

Este testimonio de Pilar no ha sido contradicho por Consolación, porque ésta no fué presentada como testigo para apoyar la defensa interpuesta, o refutar la declaración prestada por Potenciana en su deposición, de que ella creyó que se le hacía firmar un contrato de repartición, ni la de Pilar, que arriba se ha acotado, hecha ante el juzgado.

La conclusión, por lo tanto, a que ha llegado el Juzgado *a quo*, de que

"After analyzing carefully the evidence submitted by both parties, the Court believes that the signature of the plaintiff on Exhibits 1 and 4 and their original was obtained through fraud and deceit. * * *" (Expediente de Apelación p. 13),

tiene su fundamento en las pruebas.

TERCER ERROR

El Juzgado de origen no declaró nulo el documento de venta Exhibito A por aparecer en él que fué ratificado en el municipio de Calabanga, cuando de hecho se otorgó en el municipio de Naga, ambos pueblos de la Provincia de Camarines Sur. Dice:

"This conclusion is strengthened by the indisputable irregularities committed in the execution of the said deed of sale. It appears from the document that it was acknowledged in the municipality of Calabanga, Camarines Sur, before Notary Public Lorenzo Rosales. The truth, however, is that this deed was prepared and executed in the house of the defendants in the municipality of Naga, Camarines Sur, as testified to by Cesario Gomez, one of the witnesses for the defendants. The plaintiff did not appear before said notary public in Calabanga, Camarines Sur. She does not even know the said notary public. She was then sick and did not leave the municipality of Naga at any time during the year 1944." (Expediente de Apelación, págs. 13 y 14.)

Eran las irregularidades, en que se ha incurrido en el otorgamiento del Exhibito A, las que el juzgado consideró

como circunstancias indiciarias que refuerzan la conclusión a que ha llegado, de que el mismo documento se obtuvo mediante fraude y engaño. En realidad constituyen pruebas indiciarias fuertes de fraude.

CUARTO ERROR

De acuerdo con el Exhíbito A, las dos primeras parcelas cuestionadas son terrenos cocaleros y la tercera es una sementera arrozal de 7 hectáreas, 18 áreas y 70 centiáreas. En 19 de mayo de 1944, en que el mismo se otorgó, ya los terrenos agrícolas se cotizaban a un precio elevado por hectáreas, por la afluencia del dinero militar de ocupación japonesa. La tercera parcela, hubiera costado, por lo menos a razón de ₱1,000 por hectárea. Sin embargo, las tres parcelas juntas, según el Exhíbito A, se cedieron y transfirieron por el exiguo precio de ₱3,000, que ni siquiera se pagó en su totalidad, pues el mismo demandado Pedro Enríquez admite:

"Q. Here in the last paragraph of the same page which of Exhibit 1, it is said here, ₱850 pesos to be paid directly to one Simplicio Roque, attorney continues reading Exhibit 1. What have you done with that account?—A. I have not yet redeemed that."
(T. n. t. p. 7 tomadas en 26 de septiembre, 1946.)

QUINTO ERROR

Habiendo el juzgado de origen hallado que Potenciana otorgó el Exhíbito A mediante fraude y engaño, fácil es de comprender, dados su debilidad senil y el ambiente familiar con que era acogida en la casa de los apelantes, es consecuencia lógica de que no hubo de su parte un consentimiento espontáneo al suscribir y otorgar dicho Exhíbit, y menos aun en ratificarlo, porque ella nunca finé al municipio de Calabanga, para este o cualquier otro fin.

Se confirma en todas sus partes la sentencia de que se apela, con las costas a los apelantes. Así se ordena.

Jugo y Rodas, MM., están conformes.

Se confirma la sentencia.

[No. 2824—R. February 21, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FORTUNATA VINZOL, accused and appellant

1. CRIMINAL LAW; BRIBERY; ENTRAPMENT, NOT A BAR TO THE PROSECUTION AND CONVICTION, OF LAW-BREAKER; CASE AT BAR.—Where a policewoman in charge of preparing indorsements regarding application for firearm licenses, by indirection, hinted to an NBI agent that she was not averse to receiving some money for expediting the approval of licenses, and when offered ₱50 in connection with the approval of a firearm license of a chinaman she received it, it cannot be said that the NBI agent *instigated* her; the agent simply *entrapped* her. Entrapment is no bar to the prosecution and conviction of the law-breaker.

(People vs. Galicia, 40 Off. Gaz., No. 23, p. 4476, December 6, 1941; People vs. Tan Tiong, *alias* Luis Tan, *alias* Tan Yok Hua, CA-G. R. No. 43-R, February 1, 1947; People vs. Lua Chua, et al., 56 Phil., 44).

2. ID.; ID.; ID.; PRINCIPLE.—The principle is that in a prosecution for an offense against the public welfare, such as accepting a bribe the defence of entrapment cannot be successfully interposed; and this is so, when it appears that there was ground of suspicion or belief of the existence of official graft and a conspiracy by officials to obtain bribes, in which the persons caught were not the passive tools of the entrapping party, but knowingly received the bribe, especially since the persons entrapping them had no intention to participate in the wrong." (Per Kalisch, J., in *State vs. Dougherty*, 86 N. J. L., 525, 534, 93 A. 98; 16 Corpus Juris, 91). Especially in the case of bribery, the above principle is applicable in view of the fact that it is hard to prove bribery, for the briber himself is punishable by law and he is usually the only one who could give direct evidence.

APPEAL from a judgment of the Court of First Instance of Manila. Natividad, J.

The facts are stated in the opinion of the court.

Santiago F. Alidio for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Federico V. Sian* for appellee.

JUGO, J.:

Fortunata Vinzol was accused before the Court of First Instance of Manila of the crime of bribery. After trial she was convicted of indirect bribery and sentenced to suffer two (2) months and one (1) day of *arresto mayor* and suspension from office of one (1) year and eight(8) months and public censure, and to pay the costs. From said judgment the defendant appealed.

Fortunata Vinzol had been a policewoman in the Manila Police Department from September 20, 1940 to 1943. After the war she served as stenographer of the City Mayor from September 11, 1945 to September 15, 1946, being in charge also of preparing indorsements regarding applications for firearm licenses. On September 16, 1946 she was appointed police sergeant, but continued to work in the office of the Mayor, as above stated. The Division of Investigation received in September 1946, information that the defendant was in the habit of asking money from firearm license applicants for securing favorable recommendation from the Mayor.

In May, 1947, a Chinese by the name of Co Tong requested the help of his personal friend Ricardo Deblois, an agent of the Division of Investigation, to secure the approval of his application to possess a firearm, which had been filed with the Manila Police Department. Deblois took up the matter with Captain Ganibe of the firearms section of the Manila Police Department who, after

investigating the qualifications of Co Tong, recommended the approval of his application to the Chief of Police of Manila. The Chief of Police endorsed favorably the application to the Military Police Command, Philippine Army, but it had to be coursed through the office of the Mayor of Manila, whose favorable recommendation was necessary.

Agent Deblois planned to catch the defendant committing the alleged crime in regard to the application of Co Tong, submitting his plan to the Chief of the Division of Investigation (now National Bureau of Investigation), Joaquin Pardo de Tavera, who approved it and assigned agent Juan Payumo to carry it out.

On May 31, 1947, in the morning, Payumo went to the office of the defendant in the City Hall for the purpose of presenting to her the application papers of Co Tong. We quote the following testimony of Payumo:

"Q. Now, when you gave these papers (referring to the application and accompanying papers) to the accused, Fortunata Vinzol, was there anything that happened?—A. After I gave the application papers of Co Tong, and after she had read the same, she returned the said papers to me with the advice that I should secure a clearance from the Chinese Consul, the applicant, being a Chinese subject.

"Q. What did you do?—A. I told her that it was hard to get said clearance and that I would be pretty much obliged if she could have the application of Co Tong approved by the Mayor. She smiled and went outside the room. After waiting for almost an hour, she returned and sat on her chair. I seated myself too on a chair by her right side and asked her if there were no means of having the application papers of Co Tong approved by the Mayor.

"Q. What did she tell you, if any?—A. She took back the application papers of Co Tong, glanced at it and declared, 'You know, it is dangerous to deal with Chinamen.' She took from a basket on her table application papers of another Chinaman with an unsigned favorable indorsement of the Mayor to the Military Police Command. She declared: 'The applicant herein is a Chinaman. He is willing to pay me over P100, but still I did not accept his offer; and that is why I have not as yet taken this indorsement to the Mayor for his signature.' Cutting short her narration, I said, 'In this case, I cannot pay you even P100 because the applicant Co Tong, paid me P100 only, and I already spent P25 in going to and from the Manila Police Department. All that I can afford to pay is P50, the P25 being for my services.'

"Q. When you told that to the accused what did she do?—A. She smiled, took back my papers and placed the same inside the drawer of her table, and asked for my name and residence. I asked her when I should return to get the application papers, and she answered, 'On Wednesday, June 4, 1947, in the morning.' In the morning of the said date, I returned to her." (pp. 11-13, T. S. N., Regino) (Parenthesis ours.)

On June 4, 1947, at ten o'clock in the morning, Agent Payumo returned to the office of the defendant accompanied by Agents Balmaceda, Deblois, and Verzosa, leaving these three companions outside the office to await a signal from Payumo. Payumo asked the defendant wheth-

er the application had been approved. She removed from one of her drawers the application papers of Co Tong. Payumo remarked that no action had been taken upon the application. The defendant replied that it was "a simple thing," taking out the application of a person by the name of Angel Ponferrada, to which was attached a favorable indorsement signed by Mayor Valeriano Fugoso. She detached the indorsement, erased the name of Angel Ponferrada, and typewrote in its place the name of Co Tong (Exhibit B). Payumo warned her that her practice was dangerous and that he himself might be accused of falsification if he took the papers to the Military Police Command. She answered that she herself would present the papers there. She clipped the indorsement to the application of Co Tong. Payumo asked her when he should return to get the papers. She replied that he should do so the next day. Payumo asked her when he was to pay the sum of P50 and she answered today. After discussing whether Payumo himself should take the papers to the Military Police Command, she handed the papers to Payumo. Payumo delivered to her five ten-peso bills, with invisible distinguishing marks which could be detected only by applying some acid.

Payumo went out of the office to give the signal to his companions; but not finding them, he looked around for them. After one minute, he found them. They entered the office of the defendant, meeting a man who was hurriedly going out. The agents, with the permission of the defendant, made a thorough search of her bag, table, typewriter, and, with the help of policewomen, her person, but they could not find the money. They arrested and took her to the Division of Investigation in Santander Street. During the interrogation there, she made the confession, which was reduced to writing (Exhibit E), in which she stated that she had received the five ten-peso bills from Payumo, but that as soon as he left her room a man came and asked her to change a fifty-peso bill with bills of smaller denominations, and she did so.

The appellant contends that the trial court should not have admitted the testimony of Agent Payumo because he induced her to commit the crime. It is clear from the evidence that Agent Payumo did not induce the defendant to receive the bribe; it was the defendant who, by indirection, hinted that she was not averse to receiving some money for expediting the approval of licenses, by saying that she refused to accept a P100 offer for securing the approval of the firearm license application of another Chinese who had not obtained a clearance from the Chinese Consul. It was then that Agent Payumo said that he could give only P50, at which offer she smiled. A smile may be more suggestive than a word under the

circumstances of the case. Agent Payumo did not instigate her; he simply entrapped her. In the case of *U. S. vs. Phelps* (16 Phil., 440) it was held:

"When the evidence given by the witness for the Government in a criminal case shows that he actually induced the defendant to commit the alleged crime, the probative force of such testimony is thereby destroyed, and such conduct is most reprehensible and should be reprov'd and not encouraged by the courts."

In said case, the internal revenue agent Hoover G. Smith induced the defendant James O. Phelps to look for an opium den where he, the agent, could smoke opium, and also to provide him with opium. Phelps went through a great deal of trouble to look for these things. He later advised the agent that a place had been found, in which the agent could find opium and smoke it. The agent took Phelps to that place, but after staying for a while went out and afterward came back to arrest Phelps. It is unnecessary to say that the facts of that case are very dissimilar from those of the present. This case is rather similar to those cases in which the officer pretended to accept a bribe offered him by the accused and later reported the matter to the proper authorities, although here it was the accused who received the bribe through her own suggestion. In the case of *People vs. Galicia* (40 Off. Gaz., No. 23, p. 4476, December 6, 1941), followed in the case of *People vs. Tan Tiong, alias Luis Tan alias Tan Yok Hua* (CA-G. R. No. 43-R, February 1, 1947), it was declared:

"There is a wide difference between entrapment and instigation, for while in the latter case the instigator practically induces the will-be accused into the commission of the offense and himself becomes a co-principal, in entrapment ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan. Entrapment is no bar to the prosecution and conviction of the lawbreaker."

In the case of *People vs. Lua Chua et al.*, (56 Phil., 44), the Court said:

"The mere fact that the chief of the customs secret service pretended to agree to a plan of smuggling illegally imported opium through the customhouse, in order the better to assure the seizure of said opium and the arrest of its importers, is no bar to the prosecution and conviction of the latter."

If further authorities are necessary, we cite the following:

"In considering the question of public policy the clear distinction, founded on principle as well as authority, is to be observed between measures used to entrap a person into crime, in order, by making him a criminal, to aid the instigator in the accomplishment of some corrupt private purpose of his own, and artifice used to detect persons suspected of being engaged in criminal practices, particularly if such criminal practices vitally affect the public welfare rather than individuals; * * *." (16 Corpus Juris, 90-91.)

"The principle evolved from the cases appears to be that in a prosecution for an offense against the public welfare, such as accepting a bribe, the defence of entrapment cannot be successfully interposed; and this is so, when it appears that there was ground of suspicion or belief of the existence of official graft and a conspiracy by officials to obtain bribes, in which the persons caught were not the passive tools of the entrapping party, but knowingly received the bribe, especially since the persons entrapping them had no intention to participate in the wrong." (Per Kalisch, J., in *State vs. Dougherty*, 86 N. J. L. 525, 534, 93 A 98; 16 Corpus Juris, 91.)

Especially in the case of bribery, the above principle is applicable in view of the fact that it is hard to prove bribery, for the briber himself is punishable by law and he is usually the only one who could give direct evidence.

The appellant claims that the crime has not been proved, for the reason that the money was not found in the possession of the defendant and its disappearance has not been satisfactorily accounted for. The defendant could have disposed of the money during the time that elapsed since Payumo left the room to look for his companions, who had strayed away, up to the moment that they entered it.

In her confession, Exhibit E, she stated that she exchanged the five ten-peso bills for one fifty-peso bill (Exhibit D) of a person who came to her room. This confession is assailed by the appellant on the ground that it was not voluntary. No force, violence, or intimidation was used against her or promise made. She only said that she was subjected to an interrogation which lasted for several hours. It should be taken into consideration that she was a second year law student, a stenographer, a clerk and a policewoman, who must have been well aware of her rights. It is hard to believe that she would have made a written confession against her will. Moreover, if the confession had been forced from her, it would have been a positive and categorical confession, without exculpatory statements such as those contained in Exhibit E, in which she gives several explanations in an effort to minimize her guilt or to exonerate herself.

As correctly pointed out by the Solicitor General, the offense committed falls under the first part of the second paragraph of the Revised Penal Code, for the reason that the gift was accepted in consideration of the execution of an act, not constituting a crime, which was executed.

In view of the foregoing, the judgment appealed from is hereby modified by imposing upon the defendant the penalty of from three (3) months and eleven (11) days of *arresto mayor* to one (1) year, eight (8) months and twenty-one (21) days of *prisión correccional*, with the accessory penalties of the law, special temporary disqualification of eight (8) years and one (1) day and to pay a

fine of ₱50, with subsidiary imprisonment in case of insolvency.

As so modified, the judgment appealed from is affirmed with costs against the appellant.

It is so ordered.

De la Rosa and Rodas, JJ. concur.

Judgment modified.

[No. 1998-R. February 23, 1949]

CRESENCIO SIXON, plaintiff and appellee, *vs.* PABLO FETALINO et als., defendants and appellants ¹

1. PUBLIC LAND; PRESCRIPTION; HOMESTEAD CANNOT BE ACQUIRED BY PRESCRIPTION.—Land applied for as homestead may not be acquired by prescription as against the State (Government of the Philippine Islands *vs.* Adelantar, 55 Phil., 703), and much more so in a case when the acquisition is against public policy, expressly prohibited by the Public Land Act.
2. RECEIVERSHIP; RECEIVER MAY BE APPOINTED AFTER TRIAL AND JUDGMENT.—As the receiver was appointed after trial and judgment, it is evident that the bases of the petition must have been those adduced at the trial and found by the court. As the plaintiff obtained a favorable judgment, it may be stated that the appointment of a receiver was tantamount to the execution of the judgment in his favor, which is within the discretion of the court. Hence, it can not be said that the appointment was improper, altho the defendants had not been given the opportunity to oppose the same.
3. PLEADING AND PRACTICE; ACTION; PARTIES TO AN ACTION; ATTORNEY'S DUTY TO CLEARLY SPECIFY PARTIES FOR WHOM HE APPEARS; CLERK OF COURT'S DUTY UPON LAWYER'S FAILURE TO SO SPECIFY.—While it is primarily the duty of the lawyer to make his appearance clear and definite as to the person he represents, it is also the duty of the clerk of the court, under the court's direction, to have seen that this obligation is complied with and to have demanded that counsel specify clearly the parties for whom they appear. Lawyers are advised to be careful in the preparation of their appearance and pleadings, and clerks of court are admonished to demand clearness as to these matters from lawyers' appearance.
4. ID.; ID.; ID.; MINORS WITHOUT GUARDIAN AS PARTIES; COURT'S JURISDICTION; EFFECT OF JUDGMENT UPON GUARDIANLESS MINORS.—The trial court in the instant case did not acquire jurisdiction over the persons of the minors, because they were not served with summons (Salmon and Pacific Commercial Co. *vs.* Tan Cucco, 36 Phil., 556; Reyes *vs.* Paz and Judge of First Instance, 60 Phil., 440). The sending of copies of the amended complaint to them is not service of summons. Neither can it be said that they have voluntarily appeared, because no judicial guardian or guardian *ad litem* having been appointed for them, no one was authorized to do so on their behalf (Guinto *vs.* Lim Bonfing and Abendan, 48 Phil., 884). Even if the lawyers for the elder sisters had acted for said minors their acts

¹ See resolution of the Supreme Court in G. R. No. L-2972 dated August 5, 1949. Petition for certiorari is dismissed on the ground that the questions raised are factual.

would be officious and would not have any binding or legal effect on their (minors) rights. As a consequence, the judgment is null and void against the minors (I Moran 135; Banco Español Filipino *vs.* Palanca, 37 Phil., 921). Even if the sending of the copy of the complaint were to be considered as equivalent to summons, which we do not here decide, as no guardian *ad-litem* has been appointed for the minors, the judgment would still be void (43 C. J. S., p. 281).

5. *Id.*; *Id.*; *Id.*; TERM "INDISPENSABLE PARTIES" DEFINED; MINOR DEFENDANTS AS "INDISPENSABLE PARTIES"; EFFECT OF JUDGMENT, WHERE CASE INVOLVES RECOVERY OF TITLE AND POSSESSION OF COMMUNITY PROPERTY, AND CO-OWNER OF AGE HAS ALREADY PRESENTED HER DEFENSE.—Indispensable parties are defined as those without whom no final determination can be had (section 7, Rule 3, Rules of Court; I Moran 47-49), whereas the parties are only necessary, not indispensable, when partial relief can be accorded to those who are already parties, and the rights of others also interested may be reserved for future determination (section 8, Rule 3, Rules of Court, I Moran, *Id.*). It is also said that for one to be an indispensable party, he must have an interest which will be directly affected legally by the adjudication, and that if the interest is "joint", the person is an indispensable party (I Moran, pp. 51-52). Under the action, in so far as it seeks to recover the title and possession of the property, the minor defendants are indispensable parties, not necessary parties. Under the circumstances, as the rights of the defendant-co-owners are joint and indivisible as to the property and its title and possession, and the judgment rendered and now subject of the appeal can not stand as against appellant Felicidad Moreno and fall as to the minor defendants, this notwithstanding the fact that Felicidad Moreno has already presented her defense, a new trial must be granted to give the minors an opportunity to appear and defend, and the judgment already rendered must of necessity be revoked and the case sent back, so that all the parties may be finally concluded thereby. (Pinalyson *vs.* Kirby, 28 S.E. 135, 136). While this may seem unjust to the plaintiff, no one but he is to blame for the failure of the proceedings, he not having seen to it that all the parties were summoned or made to appear and brought under the jurisdiction of the court. Besides, the new trial shall proceed as outlined in section 5, Rule 37, of the Rules of Court, in accordance with which all the proceedings as against Felicidad Moreno shall stand, not being affected by the irregularities in the proceedings.

6. CO-OWNERSHIP; JURIDICAL CONCEPT OF CO-OWNERSHIP.—The juridical concept of co-ownership is unity of the object or property and plurality of subjects (3 Manresa 386). Each co-owner, jointly with the other co-owners, is the owner of the whole property but at the same time of an undivided aliquot part thereof (3 Manresa, 387). Each co-owner has the right to sell, assign or dispose of his share or part, unless personal rights are involved (Article 399, Civil Code), and, therefore, he may lose said rights to others, as by prescription thereof by a co-owner (Bargayo et al *vs.* Camumot, 40 Phil., 857).

APPEAL from a judgment of the Court of First Instance of Romblon. Farol, J.

The facts are stated in the opinion of the Court.

Marcelino Lontok for appellants.

Placido C. Ramos for appellee.

LABRADOR, J.:

This action was instituted to recover the possession of a certain parcel of land situated in the barrio of Calatrava, municipality of Badajoz, Province of Romblon, which is described in Transfer Certificate of Title No. 11 of the office of the Register of Deeds of Romblon (Exhibit B). It appears from the plan of survey of the land, Exhibit A, that the land was originally the homestead of Teodoro Moscoso. The application must have been approved and entry allowed (G-12450) before the year 1923, as the survey was made on February 23, 1923, (See Exhibit A). The defendants Morenos occupy an eastern portion of the land containing an area of about one hectare, while the defendant Pablo Fetalino, the remaining portion, about six hectares, west of that occupied by the Morenos. Both portions are planted to fruit trees, aside from 150 coconut trees on the portion occupied by Pablo Fetalino and 300 on that of the Morenos.

The portion occupied by Fetalino was purchased by him for the sum of ₱190, jointly with another parcel, from Teodoro Moscoso on October 16, 1926, (Exhibit 1-Fetalino; Stipulation of Facts, par. 5). That occupied by the Morenos was first mortgaged by Leonarda Moscoso, daughter of Teodoro Moscoso, to Simplicio Falqueza (Exhibit 2-Moreno), then sold to Enrique Moreno on March 20, 1931, for the amount of ₱600 (Stipulation of Facts, par. 1). The original certificate of title (or patent) to the homestead was issued in favor of Teodoro Moscoso on October 10, 1932 (see Exhibit B), and he sold it to plaintiff on May 7, 1938 (Exhibit C). The defendants have been in possession of the respective portions occupied by them from the time they acquired the same (Stipulation of Facts).

As the appeal of defendant-appellant Felicidad Moreno involves questions of procedure which are not raised in that of Pablo Fetalino, and, as will be seen later, require further proceedings in the trial court, only the questions raised in the latter's appeal will first be considered.

The first important question at issue is the ownership of the land. Appellant contends that the land was originally private land which he and his codefendants had acquired by prescription and which plaintiff and his father-in-law Teodoro Moscoso surreptitiously applied for as homestead in bad faith. We find no evidence to support the claim that the land was originally private land. On the contrary, the plan, Exhibit A, positively shows that the land is the homestead of Teodoro Moscoso, the survey of which was made in February, 1923. The conveyances in favor of the defendants are dated 1926 and 1931, so that it can not be claimed that at the time of these sales the land was not yet a homestead. As the land was

already a homestead in 1923, it is clear that the rights of the homesteader thereto are governed by the law in force at the date of the order approving the final proof and directing the issuance of the patent (*Balboa vs. Farrales*, 51 Phil., 498). This date may be placed around the year 1923, as it appears from the plan that homestead entry had already been made.

The law in force then is Act No. 2874, the pertinent provision of which is as follows:

"SEC. 116. Lands acquired under the free patent or homestead provisions shall not be subject to encumbrance, or alienation from the date of the approval of the application and for a term of five years, from and after the date of issuance of the patent or grant,
* * *

In accordance with the above provision, there can not be any question as to the nullity of the transfers or conveyances made by Teodoro Moscoso in favor of Pablo Fetalino through Exhibit 1-Fetalino. The policy of the law is clear and it must be enforced to the limit. And conversely, as the law then in force prohibits sale of the homestead only within five years after the issuance of the patent, the sale in favor of plaintiff Cresencio Sixon must be upheld, there being no evidence adduced at the trial of any defect or irregularity in said transaction.

Appellant Fetalino contends that he acquired ownership of the portion he possesses by prescription, because he did so in good faith and had held it for seventeen years continuously. In answer, we must state that the land was a homestead, a part of the public domain, which can only be acquired in the manner provided by the public Land Act. Land applied for as homestead may not be acquired by prescription as against the State (*Government of the Philippines Islands vs. Adelantar*, 55 Phil., 703), and much more so in a case like the present, when the acquisition by them is against public policy, expressly prohibited by the Public Land Act.

The above considerations dispose of the main questions at issue in the case as against the defendant-appellant Pablo Fetalino, especially the third, fourth, and fifth assignments of error.

The sixth assignment of error refers to the payment of damages beginning from the year 1938. Defendant-appellant Pablo Fetalino claims that there should be no damages to be paid, as the trial court had found that the defendant's possession was in good faith. This claim is without merit; his good faith ceased upon the plaintiff's demand for the delivery of the land to him, because from that time on he should have known of the flaw in his title. We find, however, that the manner in which the court computed the damages is subject to the objections, namely, that it failed to take into account that during

the military occupation the prevailing currency was the Japanese military notes, and it also failed to deduct the expenses of cultivation, harvesting, and production in general. In the case of coconut trees around one-third goes to the caretaker, who, besides guarding the coconuts, cleans the land, picks up the nuts, and later converts them into copra. Of these facts the trial court should have taken judicial notice in the interest of truth, equity, and justice.

The appellee claims that the produce of the portion occupied by Fetalino is 1,200 nuts a quarter. This is not correct. It is only 300 nuts every three months according to plaintiff himself (t.s.n., p. 7). With respect to the value of the coconuts harvested during the years 1942, 1943, and 1944 (P72), the reduction by reason of the depreciated currency value during those years is too insignificant to merit our attention. But from the amount of P372 fixed by the trial court a reduction by one-third should be made, such reduction to cover costs of production, marketing, etc. This reduces the damages payable by Pablo Fetalino to P248.

Only one more question (assignments of error Nos. 1 and 2) need be considered in connection with Fetalino's appeal, and this is the appointment of a receiver without the court having given opportunity to the defendants to oppose the same. As the receiver was appointed after trial and judgment, it is evident that the bases of the petition must have been those adduced at the trial and found by the court. As the plaintiff obtained a favorable judgment, it may be stated that the appointment of a receiver was tantamount to the execution of the judgment in his favor, which is within the discretion of the court. In view of the results of this appeal, we can not say that the appointment was improper.

Having disposed of the appeal of Pablo Fetalino, we shall now proceed to consider that presented by Felicidad Moreno.

The first question raised by her is procedural and refers to the fact that no proceedings had been had for the appointment of a guardian *ad litem* for the defendants Patriotico, Damaso, and Julian, all surnamed Moreno, all of whom appear to be minors at the time of the trial. It is, therefore, claimed that the said minors have been deprived of their property without hearing, because they are made jointly responsible for the damages. The Record on Appeal does not give enough data on which this court could act in order to resolve the issues raised. Fortunately, the whole record of the case has been forwarded to this Court for the reason perhaps that the documentary evidence is not kept separately therefrom. This gives this court opportunity to revise the record,

with a view to determining the regularity of the proceedings in so far as the minor defendants are concerned.

Upon examining the record we find the following:

1. The original complaint is against Pablo Fetalino and Felicidad Moreno and the heirs of the late Enrique Moreno. The alleged heirs are not named individually.

2. No summons was issued against the heirs of Enrique Moreno. Summons was issued and served only on Pablo Fetalino and Felicidad Moreno.

3. An amended complaint was filed later, and the defendants Morenos are there individually named as Felicidad, Felipa, Adelaida, Vicenta, Dominador, Patriotico, Damaso, and Julian, all surnamed Moreno. It prayed that defendants, "no mention being made of the names of the defendants, them in the litigation. This amended complaint does not mention, however, which of the defendants are minors. Upon instructions of the clerk of court, plaintiff sent by registered mail copies of the amended complaint, one to each of the seven defendants, but no summons was served on them.

4. It does not appear that the mother of the defendants Morenos, who was asked in the amended complaint to be appointed guardian *ad litem*, was ever appointed guardian *ad litem* of the minors, or that she ever qualified as such.

5. Of the defendants Morenos, only one filed an answer through Attorney Francisco Fondevilla.

6. In a motion of dismissal dated November 20, 1940, Attorney Francisco Fondevilla appeared for the "defendants," no mention being made of the names of the defendants for whom he appeared. But in the answer he filed on May 9, 1941, he signed as attorney for the defendant, and Felicidad Moreno signed the answer with him, with the note: "With my authority."

7. At the trial various attorneys appeared for "defendants" without express mention of the names of their respective clients. During the trial a stipulation of facts was also entered into in writing, and this is signed by Attorneys Festin and Fondevilla as Attorneys for the Morenos." Attorney Francisco Fondevilla appeared only for "defendants" without mentioning them individually; in the stipulation of facts he signed as "attorney for the Morenos."

8. The absence of a representative of the minors in the proceedings was raised for the first time in a motion for new trial dated April 10, 1947, signed by Felicidad Moreno and accompanied by an affidavit of Dominador Moreno, who claims to be 23 years of age. Those whose names were joined as movants are Felicidad Moreno, Josefa Moreno, Vicenta Moreno, Dominador Moreno, Patriotico Moreno, Damaso Moreno, and Julian Moreno, although

only Felicidad Moreno signed for all of them. In this motion it is claimed that the decision is contrary to law as *Damaso*, *Julian*, *Patriotico*, and *Dominador* are minors and were not legally represented at the trial.

9. On June 24, 1947, an amended motion for new trial was filed by Attorneys Festin and Fondevilla, who sign as attorneys for "defendants" without mention of the individual names of the latter.

10. On July 16, 1947, another "motion for reconsideration and second motion for new trial" was filed by Attorney Marcelino Lontok for and on behalf only of Felicidad Moreno and Pablo Fetalino. These motions were denied. In the subsequent proceedings, Attorney Marcelino Lontok appears for the "defendants" or "appellants" without mentioning these specifically, and as he has not made any modification of the capacity in which he appears, we must presume that he represents only the defendants and appellants Pablo Fetalino and Felicidad Moreno.

We note, therefore, that as to the three minors, *Patriotico Moreno*, *Damaso Moreno*, and *Julian Moreno*, no summons was served on them and no legal guardian or guardian *ad litem* was appointed for them. Neither does it clearly appear that Felicidad Moreno's attorneys ever expressly appeared for them. Even Atty. Marcelino Lontok, who appears in this instance for the defendants-appellants, seems to have never appeared for the minors, as in the motion for reconsideration and second motion for new trial presented by him on July 6, 1947, he only presents himself as attorney for the defendants Felicidad Moreno and Pablo Fetalino (See Record on Appeal, p. 24). The Record on Appeal appears signed by Attorney Marcelino Lontok as attorney for the defendants, but in his reply to the opposition to its approval he specifically appears on behalf of Pablo Fetalino and Felicidad Moreno.

The record as above set forth shows a confusion produced by the carelessness of counsel for defendants in the court below, in not specifying in their pleadings the parties on whose behalf they appear or present their pleadings and motions. While it is primarily the duty of the lawyer to make his appearance clear and definite as to the person he represents, it is also the duty of the clerk of the court, under the court's direction, to have seen that this obligation is complied with and to have demanded that counsel specify clearly the parties for whom they appear. With the lesson we learn from this confused state of the case in mind, we advise lawyers to be careful in the preparation of their appearances and pleadings, and clerks of court to demand clearance as to these matters from lawyers' appearances.

The confusion above set forth is aggravated by failure on the part of the party plaintiff to secure the court's

action on his motion for the appointment of a guardian *ad litem* for the defendants who are minors, abetted by the corresponding failure of the clerk of the court in summoning all the defendants named in the complaint. As the record now stands, it was Felicidad Moreno alone who was summoned. In all likelihood, all the other parties were minors when the amended complaint was filed, although they may have reached the age of majority since then. We deduce from the motion of August 10, 1947, where all the defendants appear, although Felicidad Moreno alone signed the motion, that on that date all but three of the defendants had reached the age of majority, and all having appeared, those of age must be deemed to have submitted themselves to the jurisdiction of the court by their appearance. It is to be noted, however, that the objection raised in the motion is the fact that the minors had not been represented by a guardian *ad litem*, not that they were not served with summons.

The question now before us, therefore, is the validity of the proceedings both as against Felicidad Moreno and the other defendants, the minors included, for the reason that the three minors above-mentioned are not represented by a judicial guardian or a guardian *ad litem*, and neither were they served with summons, but were only furnished copies of the amended complaint by registered mail.

It is evident that the trial court did not acquire jurisdiction over the persons of the minors, because they were not served with summons (*Salmon and Pacific Commercial Co. vs. Tan Cueco*, 36 Phil., 556; *Reyes vs. Paz* and Judge of First Instance, 60 Phil., 440). The sending of copies of the amended complaint to them is not service of summons. Neither can it be said that they have voluntarily appeared, because no judicial guardian or guardian *ad litem* having been appointed for them, no one was authorized to do so on their behalf (*Guinto vs. Lim Bonfing and Abendan*, 48 Phil., 884). Even if the lawyers for the elder sisters had acted for them, which is not clear in the record either, their acts would be officious and would not have any binding or legal effect on their (minors') rights. As a consequence, the judgment is null and void against the minors (*I Moran* 135; *Banco Español Filipino vs. Palanca*, 37 Phil., 921). Even if the sending of the copy of the complaint were to be considered as equivalent to summons, which we do not here decide, as no guardian *ad litem* has been appointed for the minors, the judgment would still be void (43 C.J.S., p. 281).

The next question to be determined is the effect of the invalidity of the judgment as against the minors upon defendant-appellant Felicidad Moreno, who was served with summons, appeared personally with and by counsel, and took part in the trial and in all the proceedings.

On this question authorities are divided. That supporting invalidity is 27 Am. Jur., p. 843, which says:

"Adult defendants may maintain exceptions against a judgment because of the failure to appoint guardian *ad litem* for infant defendants; since the former ought not to be concluded by a judgment which may be repudiated by other interested parties."

The above ruling is based on the cases of *McDaniel vs. Correl*, 68 Am. Dec., 587, 589-590, and *Scaife et al. vs. Jones et al.*, 99 So. 890, 892.

On the other hand *Corpus Juris Secundum* sustains the contrary view, thus:

"Adult parties can not invoke the infancy of another party not represented by guardian *ad litem* to set aside the decree as to themselves" (43 C.J.S., p. 281).

This is supported by various state decisions among which are *De Groat vs. Tompkins Bus Corporation*, 254 N.Y.S. 878, citing 22 Cyc., p. 644, and *Hutton vs. Williams*, 60 Ala., 107. The reason for the decision in the case of *McDaniel vs. Correl*, *supra*, is the conflict in the interest of the parties if the judgment is changed as to the minors and not as to those of legal age over whom the court acquired jurisdiction. The reason given for the decision in the case of *Hutton vs. Williams* is the fact that infancy as a defense is a privilege available only to the infant, his heir or representative. We find both of the reasons weighty and certainly applicable to the case at bar. Should we choose any one of the two alternatives, or should we choose a different course of action? For it is evident that if we annul the judgment even as to the defendants who appeared and defended, we would be doing an injustice to the plaintiff, and if, on the other hand, we are to make the judgment valid and binding as to them (defendants who appeared and defended), we might be faced with the possibility (not probability) of a decision on the land holding that the undivided share of the defendant who appeared was illegally acquired, while those of the minors otherwise, *i.e.*, validly acquired.

It must be remembered that the present action is one of ejectment, involving title and possessions; more specifically, it is an action to annul the sale executed by a daughter of the homesteader of a portion of the homestead to the father or predecessor in interest of the parties defendants and to recover the land thus conveyed, together with damages. The land is an inheritance of the defendants and there is, therefore, co-ownership among them consequently, each heir holds title to an aliquot or proportionate but undivided share in the land. The juridical concept of co-ownership is unity of the object or property and plurality of subjects (3 Manresa, 386). Each co-owner, pointly with the other co-owners, is the owner of the whole prop-

erty but at the same time of an undivided aliquot part thereof (3 Manresa, 387). Each co-owner has the right to sell, assign or dispose of his share or part, unless personal rights are involved (Article 399, Civil Code), and, therefore, he may lose said rights to others, as by prescription thereof by a co-owner (Bargayo et al., *vs.* Camumot, 40 Phil., 857).

With the above considerations in mind as to the nature of the rights of the defendants in the property subject of the action, let us now shift our inquiry to the judicial proceedings in relation thereto. Are the defendants, who are co-owners, indispensable or only necessary parties? Indispensable parties are defined as those without whom no final determination can be had (Section 7, Rule 3, Rules of Court, I Moran, 47-49), whereas the parties are only necessary, not indispensable, when partial relief can be accorded to those who are already parties, and the rights of others also interested may be reserved for future determination (section 8, Rule 3, Rules of Court, I Moran, *Id.*).

It is also said that for one to be an indispensable party, he must have an interest which will be directly affected legally by the adjudication, and that if the interest is "joint," the person is an indispensable party (I Moran, pp. 51-52); that since under the Iowa law title to property vests in the heir upon death, the executor of the will is not an indispensable party to an action to quiet title (*Op. cit.*, p. 56).

As each of the defendants, heirs of the deceased Enrique Moreno, is an owner of the whole, jointly with his other co-owners, it is apparent that no judgment can be entered for the adjudication of the title and the return of the whole property without affecting directly the interests of each and every one of the co-owners. In the same manner, no judgment can be entered declaring that the sale to Enrique Moreno was null and void without affecting all of his heirs, the present defendants. We, therefore, hold that under the action, in so far as it seeks to recover the title and possession of the property, the minor defendants are indispensable parties, not necessary parties. Under the circumstances, as the rights of the defendants-co-owners are joint and indivisible as to the property and its title and possession, the judgment rendered and now subject of the appeal can not stand as against appellant Felicidad Moreno and fall as to the minor defendants, this notwithstanding the fact that Felicidad Moreno has already presented her defense. A new trial must be granted to give the minors an opportunity to appear and defend, and the judgment already rendered must of necessity be revoked and the case sent back, so that all the parties may be finally concluded (*Pinalyson vs. Kirby*, 28 S. E. 135, 136). While this may seem unjust to the plaintiff, no one

but he is to blame for the failure of the proceedings, he not having seen to it that all the parties were summoned or made to appear and brought under the jurisdiction of the court. Besides, the new trial shall proceed as outlined in section 5, Rule 37, of the Rules of Court, in accordance with which all the proceedings as against Felicidad Moreno shall stand, not being affected by the irregularities in the proceedings.

Wherefore, the judgment appealed from is hereby modified as to the defendant and appellant Pablo Fetalino, and he is hereby ordered to return the portion of the homestead occupied by him to the plaintiff and to pay the latter the sum of P248 as damages, and it is hereby reversed as to the defendant-appellant Felicidad Moreno, and as to all the other defendants the case is hereby remanded to the court below for further proceedings against those defendants, such as the appointment of a guardian *ad litem* for the minors and the service of summons on them and on their guardian *ad litem*, and for a new trial in accordance with this decision. One-half of the costs on this appeal shall be taxed against the defendants-appellant Pablo Fetalino; no costs are granted as against the other defendant-appellant. So ordered.

Paredes and Barrios, JJ., concur.

Judgment modified.

[No. 2345-R. February 23, 1949]

JUAN C. PAJO, petitioner and appellant, *vs.* JACINTO C. BORJA, respondent and appellee

1. ELECTION LAW; POLITICAL RESIDENCE; THREE RULES ON RESIDENCE.—It is well settled that residence is a question both of intention and circumstances; consequently, all these must be taken into account in each particular case. In the consideration of the circumstances, however, three rules must always be borne in mind. First, that a man must have a residence or domicile somewhere; second, when once established it remains until a new one is acquired; and third, a man can have but one domicile at a time (*Alcantara vs. Secretary of the Interior*, 61 Phil., 459).
2. *Id.*; *Id.*; PERSONS IN THE GOVERNMENT SERVICE; CASE AT BAR.—It is well settled that persons in the service of the Government neither acquire a residence for election purposes in the election districts in which they may be stationed, nor lose their political domiciles in the place whence they came (20 C. J., sec. 32, p. 73). Hence, the respondent's continued residence in Manila from 1937 to 1947, while he was in the public service from 1937 to 1942, and 1944 to 1947, did not have the effect of destroying his political domicile in the place whence he has come (20 C. J., Sec. 30, p. 73).
3. *Id.*; *Id.*; STUDENT, HIS POLITICAL DOMICILE; CASE AT BAR.—A student is never presumed to have a right to vote in the town where the college in which he studies is (20 C. J., sec. 30, p. 72). Hence, the stay of the respondent in the United States

as a student from 1931 to 1947 being a temporary residence and not an actual residence (In re Erickson, 10 A. 2d 142, 18 N.J. Misc. 5, cited in Revised Election Code, Francisco, p. 134), did not operate to affect respondent's residence in Bohol.

4. *Id.*; *Id.*; RESIDENCE CERTIFICATE NOT EVIDENCE OF POLITICAL RESIDENCE OF HOLDER.—A residence certificate, or the statement therein of the place of residence, is no evidence of the political residence of the holder or of his intention to acquire such residence. A cursory perusal of the provisions of Commonwealth Act No. 465, which imposes the residence Tax readily discloses that a certificate of residence is not truly what its name implies, "a certificate of residence." It is more properly an "identification certificate" for the reason that the place and date of birth and civil status are required to be placed therein, and these circumstances identify the holder (see section 3, Commonwealth Act No. 465), and for the further reason that the law requires it to be exhibited as a means of identification before any government department, branch or office, or before notaries public (section 6, *Ibid.*). And the further fact that it may be taken in any place where a person is sojourning only (section 1446, Revised Administrative Code) supports this conclusion. Besides, tax officers do not make any investigation regarding legal residence before issuing the certificate. All that the certificate purports to state is actual residence, not legal or political residence.

APPEAL from a judgment of the Court of First Instance of Bohol. Rodriguez, J.

The facts are stated in the opinion of the court.

Carlos P. Garcia for appellant.

Jacinto Borja, M. Suza & A. Mumar and *M. J. Cuenco* for appellee.

LABRADOR, J.;

This is a proceeding of *quo warranto* instituted under the provisions of section 173 of the Revised Election Code against Dr. Jacinto C. Borja, who was elected provincial governor of Bohol in the general elections of November 11, 1947, over petitioner herein Juan C. Pajo, by a plurality of 7,422 votes. It is alleged as a ground of action that the respondent, said Dr. Jacinto C. Borja, was not a resident of Bohol for a period of at least one (1) year immediately preceding his election, as required by section 2071 of the Revised Administrative Code.

It appears that respondent herein was born in Tagbilaran, Bohol, on October 31, 1901. His father was former Judge of First Instance Candelario Borja, who, before his appointment to the bench, was an Assemblyman or Representative from the province of Bohol. Respondent lived in Tagbilaran, Bohol, during his early years and studied the elementary grades in said municipality. In 1917 he went to study in Silliman, Dumaguete, Negros Oriental, and he continued studying there until the year 1922 or 1923. While there his father was assigned as Judge of First Instance to Cagayan, Misamis, and so the latter trans-

ferred his residence to said province. Respondent was receiving support from his father and he used to visit his father in Cagayan, but during vacations he used to stay in Tagbilaran, Bohol, with his grandmother. He was the only son of Judge Borja by the first wife, and so he did not seem to be close to his stepmother or his stepbrothers and stepsisters. From Silliman he came to study in the University of the Philippines in Manila in 1924. He stayed here until 1928, when he completed his law course. After finishing the bar examinations in 1928, he went to Bohol and put up his shingle at his father's house in Tagbilaran and began defending cases in the province. His shingle is still at his father's house, which is now his own by inheritance from his father. He lived in Bohol from 1928 to 1931 when he went to continue his studies in the United States. He did not come back from abroad until the year 1937. Upon his return to the Philippines and on August 18, 1937, he was employed as technical assistant in the office of the President, Manila (Exhibit Z). On January 1, 1940, he was appointed Special Assistant, Foreign Relation Division of the Office of the President, but he was laid off during the Japanese military occupation on March 31, 1942 (Ibid.). On August 1, 1945, he was appointed Acting Senior Assistant again in the Office of the President and later Acting Protocol Officer until August 8, 1946, when he was transferred as chief of the Division of Foreign Affairs (Ibid., Exhibit B.) On September 16, 1947, he was declared automatically separated by reason of the presentation of his candidacy for Governor on September 9, 1947 (Exhibit A).

Respondent has lands in Tagbilaran, Bohol, and in other parts of the province, including a house owned in common, where his shingle still hangs. As student he used to spend his vacations in Tagbilaran with his grandmother. Even after his marriage he used to bring his family to Bohol for vacations. All his three children were born in Bohol.

When respondent matriculated in the the University of the Philippines in 1927, he furnished the following information; Place of subsistence—Cagayan, Misamis; Home address—Tagbilaran, Bohol (Exhibit 1). But the data appearing in his records in the University are as follows: Legal Residence—Cagayan, Misamis (Exhibit D). According to his record of graduation, however (U.P. Form No. 32-A, Exhibit 2), his home address is Tagbilaran, Bohol. Even his oath of office as chief of division, Department of Foreign Affairs, recites that he is "of Tagbilaran, Bohol" (Exhibit C).

The respondent never registered as a voter in any place other than in Tagbilaran, Bohol. In 1931 he voted there and worked for a candidate for a local position. On March 9, 1946, he registered as an elector in Tagbilaran, Bohol

(Exhibit 4-A), although he does not appear to have voted then. But he voted in the parity plebiscite on March 11, 1947 (Exhibit 5-A), in Tagbilaran, Bohol, under his registration of 1946.

Under the above facts, the trial court found that respondent was a resident of Bohol for one year prior to his election and, therefore, dismissed the action. Hence this appeal.

In determining the question at issue, i.e., whether respondent was a resident of Bohol at least for a period of one year before his election in 1947, it is improper to limit inquiry only to actual residence, although for local officials the law places importance on residence, as acquaintance with a locality is desirable or required of them. It is well settled that residence is a question both of intention and circumstances; consequently, all these must be taken into account in each particular case. In the consideration of the circumstances, however, three rules must always be borne in mind. First, that a man must have a residence or domicile somewhere; second, when once established it remains until a new one is acquired; and third, a man can have but one domicile at a time (*Alcantara vs. Secretary of the Interior*, 61 Phil. 459).

As a starting point, we must begin from the undisputed fact that Tagbilaran, Bohol, is the domicile or residence of origin of the respondent. He was born there, his parents were natives of the place; as a matter of fact, his father was a representative from that province, and, therefore, for political purposes Bohol was his father's and respondent's own residence. When towards the years 1920 to 1922 his father moved to Cagayan, Misamis, because he was assigned as judge of said province, it did not necessarily follow from such transfer of residence alone that respondent's father became a resident of Misamis, because it is well settled that persons in the service of the Government neither acquire a residence for election purposes lose their political domiciles in the place whence they come in the election districts in which they may be stationed, nor (20 C. J.) sec. 32. p. 73). Assuming for the sake of argument that his father subsequently changed his residence from Bohol to Misamis, respondent did not follow such residence acquired by his father for two evident reasons, namely, in 1922, when he finished his studies in Silliman, he was already of legal age and had already his own residence, distinct and separate from that of his father, and second, because his intention became manifest that he neither desired to change his original residence, as he did not go to live with his father in Misamis but continued in Bohol, staying with his grandmother and making only occasional visits to his father in Misamis. This conduct of his is explained by the fact that his mother had died

and his father had married anew, and the family of his father was made up of stepbrothers and stepsisters. The least that can be said is that upon reaching the age of majority, he did not show any intention of abandoning his residence of origin and of acquiring a new one. Even as a student in the University of the Philippines from 1924 to 1928 said intention (of retaining his residence of origin) was apparent, as he always took his vacations in Bohol and in his college records he always put Bohol as his native and home province, never Misamis. Neither did he acquire a new residence in Manila, because a student is never presumed to have a right to vote in the town where the college in which he studies is (2 C.J., Sec. 30, p. 72).

But in 1928, when the respondent began to actually reside and practice his profession in Bohol, hanging his shingle at his parents' house, there was a positive and conclusive reaffirmation on his part of continuing his residence in Bohol. Thus, he voted in 1931 in Tagbilaran, Bohol, and even worked for a local candidate in the place. This fact of his residence in Bohol in 1931 is indisputable. It is from this residence in Bohol that we must again start our further inquiry.

The stay of respondent in the United States as a student from 1931 to 1937 was a temporary residence, not an actual residence (In re Erickson, 10 A. 2d 142, 18 N.J. Wisc. 5, cited in Revised Election Code, Francisco, p. 134), and did not operate to affect respondent's residence in Bohol. His continued residence in Manila from 1937 to 1947, while he was in the public service from 1937 to 1942, and 1944 to 1947 (See Exhibit Z) did not also have the effect of destroying his political domicile in the place whence he has come (20 C.J., 32, p. 73).

It is contended by petitioner-appellant that respondent's certificate of registration, (Exhibit I) issued in Manila on February 2, 1947, wherein statement is made that he had been residing in Manila from 1937, coupled with the circumstances that all his children had been living with him in said city, that his wife is a Manilan, that he owns no house in Tagbilaran, and that he did not go to Bohol from 1942 to 1944—all are evidence of his intention to make Manila his residence. We find no merit in this contention. A residence certificate, or the statement therein of the place of residence, is no evidence of the political residence of the holder or of his intention to acquire such residence. A cursory perusal of the provisions of Commonwealth Act No. 465, which imposes the residence tax, readily discloses that a certificate of residence is not truly what its name implies, "a certificate of residence." It is more properly an "identification certificate" for the reason that the place and date of birth and civil status are required to be placed therein, and these circumstances identify the

holder (see section 3, Commonwealth Act No. 465), and for the further reason that the law requires it to be exhibited as a means of identification before any government department, branch or office, or before notaries public (section 6, *Ibid.*). And the further fact that it may be taken in any place where a person is sojourning only (section 1446, Revised Administrative Code) supports this conclusion. Besides, tax officers do not make any investigation regarding legal residence before issuing the certificate. All that the certificate purports to state is actual residence, not legal or political residence. In view of these circumstances, even if Exhibit I were properly admissible as evidence, as shedding some light on the subject of inquiry before the court, and its rejection by the trial court an error, it was not a prejudicial error which may be a ground for the reversal of the judgment.

Neither does the stay of respondent's children with him in Manila have any relevant materiality as to respondent's intention to adopt Manila as his political residence, especially as he and his family frequently went to Bohol to spend their vacations, nor his stay in Manila from 1942 to 1944, after he had been laid off as a government employee, for the reason that during the Japanese military occupation no one could be said to be free in his movements, and his stay in one place would not be evidence of his desire to live there permanently or adopt it as his residence.

But as against the above circumstances cited by petitioner-appellant, we have the following more relevant facts: respondent never purchased a home in Manila; never practiced his profession therein; never sold his lands and interests in Bohol; never removed his shingle at his house in Bohol; never registered himself at any time as a voter, nor voted or campaigned in Manila, notwithstanding the fact that he was in Manila from 1937 to 1941. On the contrary, the first opportunity or occasion after the liberation which he had to evidence his intention, i.e., in March, 1946, he promptly registered as a voter in Tagbilaran, Bohol. Under the circumstances, we are constrained to hold not only that respondent never abandoned his residence of origin, never acquired or intended to acquire a new political residence in Manila and was, therefore, presumed to have continued his political residence in Bohol, but also that he positively and conclusively reaffirmed his intention to continue his political residence in his home of origin by his registration therein in March, 1946.

The cases of *Nuval vs. Guray*, 52 Phil., 649, and *Tanseco vs. Arteché*, 57 Phil., 235, in so far as reversion to an old residence is concerned, can have no application in this case, because respondent *never abandoned, nor did he ever intend to abandon*, his residence of origin. There was, therefore, no need of a return thereto.

The above dispose of all the important points raised on this appeal. Only one minor point need be considered, and that is the refusal of the trial court to postpone the trial. It has not been shown what evidence petitioner could have adduced in addition to those which he already had, had a new trial been granted. Matters of continuance are addressed to the discretion of the trial judge, and we believe the trial court did not abuse its discretion in denying the motion. Anyway, in this court we have already taken into account Exhibit I, which seems to be the mainstay of petitioners's claim.

For all the foregoing considerations, we find that the judgment of the trial court dismissing the petition is fully supported by the facts found at the trial, and we hereby affirm it, with costs against the petitioner-appellant. So ordered.

Paredes and Barrios, JJ., concur.

Judgment affirmed.

[No. 3280-R. February 23, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ALEJANDRO PEREZ Y ALONZO, defendant and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM AND AMMUNITIONS; LAW PUNISHES POSSESSION IN GENERAL.—Whether the firearm and ammunitions were found on the person of the accused or on top of a *baul* in the house, where accused said he had placed them, the law considers that the said prohibited firearm and ammunitions were found in his possession and under his control. As was said in *People vs. Villanueva*, No. R-188, 43 Official Gazette p. 1271, (April, 1947), "the law prohibiting illegal possession of firearm does not punish physical possession alone but possession in general. This includes not only actual physical possession but also constructive possession or the subjection of the thing to the owner's control."

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Mamerto Roxas for appellant.

Assistant Solicitor-General Manuel P. Barcelona and *Acting Solicitor Victorino Pascasio* for appellee.

DE LEON, J.:

This is an appeal from the decision of the Court of First Instance of Manila finding Alejandro Perez y Alonzo guilty of a violation of the provisions of Republic Act No. 4 and sentencing him to suffer an indeterminate penalty of from 1 year and 1 day to 3 years of imprisonment, with costs, and ordering the forfeiture in favor of the government of the firearm and ammunitions found in his possession.

It appears from the prosecution evidence that at about 7 o'clock in the evening of May 25, 1947, Police Sergeant Silvino Flores together with Patrolmen Beado, Mesina and De Leon, went to the house at No. 819 Interior, Asuncion Extension, Tondo, Manila, for the purpose of investigating the owner thereof in connection with a theft case committed in said house. Upon entering, the police officers saw inside the house, the accused Alejandro Perez and his companion, Alberto Roque, who were both wanted by the authorities in connection with a murder case committed in Peñalosa Street sometime in May, 1947. A search was made, and the .45 caliber revolver (Exhibit A) with magazine and ammunitions, (Exhibits B, C, and D) was found on the person of appellant Perez. When asked as to the ownership thereof, said appellant answered that it belonged to him, having bought it from Detective Labis.

In exculpation, appellant contends that the firearm and ammunitions in question were not found inside his shirt, but were found wrapped on top of a chest; that on May 23, 1947, a certain detective named C. B. Labis brought to his house in Calle Obrero the said pistol and ammunitions asking him to sell the same for him, as he (the said detective) was in need of money; that at first, appellant refused to do so as this might bring him within the toils of the law, but said Labis assured him that he should not fear anything, as he was a detective and would take care of him, should anything happen; that the said detective even wrote down his name and address on a piece of paper which he gave to appellant; that on the afternoon of May 25, 1947, he went down from his house in Barrio Obrero bringing with him the said firearm and ammunitions and proceeded to the house at No. 819, Interior, Asuncion Extension, Tondo, Manila for the purpose of looking for a buyer thereof and it was while he was in the latter house that the said firearm and its ammunitions were found by the police.

The lower court discredited entirely the above testimony of the appellant partly corroborated by his common-law wife, and accepted as true the testimony of the arresting officer, Sergeant Flores.

As maybe seen from the above, there is no dispute that the .45 caliber revolver (Exhibit A) and the magazine and ammunitions (Exhibits B, C and D) were, in the evening of May 25, 1947, found in the possession and under the control of the defendant and appellant. Whether they were found on his person as contended by the arresting officer or on top of a *baul* in the house at 819 Interior, Asuncion Extension, where appellant said he had placed it, we reach the same conclusion and that is, that the prohibited firearm and ammunitions were found in the possession and under the control of the appellant. As was said in *People vs. Villanueva*, No. R-188, 43 O. G., p. 1271 (April, 1947),

"the law prohibiting illegal possession of firearm does not punish physical possession alone but possession in general. This includes not only actual physical possession but also constructive possession or the subjection of the thing to the owner's control."

Again, even assuming, *arguendo*, that Detective Labis had left the said firearm and ammunitions with the appellant for him to sell, the latter cannot ascape criminal liability, since he had no permit or license to possess or sell the said firearm and ammunitions. Lastly, appellant's contention advanced during the trial that the real owner of the firearm and ammunitions was Detective Labis is not only devoid of any supporting evidence, but also runs counter to his written statement (Exhibit F) made in the police station immediately after his arrest, wherein he admitted that he owned the revolver having purchased the same from Detective Labis for the sum of P160. It cannot be gainsaid that appellant's spontaneous statement contained in Exhibit F is more believable than his testimony at the trial which is but an afterthought.

We have carefully examined the record of this case and found no reason whatsoever for disturbing the judgment of conviction.

Wherefore, the decision appealed from is hereby confirmed in all its parts, with costs.

Concepcion and Dizon, JJ., concur.

Judgment affirmed.

[No. 2530-R. Febrero 24, 1949]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
MAXIMINO ELGAR, acusado y apelante

DERECHO Y PROCEDIMIENTO PENAL; RAPTO CON ANUENCIA; JURISDICCIÓN; "TUTOR DE LA MENOR," SU CAPACIDAD COMO DENUNCIANTE.—Una denuncia en un caso de rapto con anuencia, en la que se alega bajo juramento que el denunciante en cuya custodia vivía la ofendida como hija desde su niñez, es el "tutor legal de la menor", es suficiente para conferir jurisdicción al juzgado, toda vez que no existan pruebas que no fuera él el tutor legal (guardian) de la ofendida.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Camarines Sur. Surtida, J.

Los hechos aparecen relacionados en la decision del Tribunal.

Sres. De León & Tiuseco en representación del apelante.
El Procurador General Auxiliar Sr. Guillermo E. Torres
y el Procurador Sr. Tomás Cruz en representación del apelado.

DE LA ROSA, M.:

Maximino Elgar, acusado de raptó con violencia, fué por el Juzgado de Primera Instancia de Camarines Sur, Décimocuarto Distrito Judicial, hallado culpable de raptó con anuencia y sentenciado a sufrir la pena indeterminada de seis (6) meses de arresto mayor a dos (2) años, once (11) meses y diez (10) días de prisión correccional, a mantener la prole, si tuviere la ofendida, y a pagar las costas, fallo contra el cual se alzó para ante este Tribunal de Apelaciones, atribuyendole en su alegato los siguientes errores:

- “1. In holding that the offended party was a minor.
2. In not holding that the offended party was not a virgin.
3. In not dismissing the case for lack of jurisdiction.
4. In not declaring that the guilt of defendant-appellant was not proved beyond reasonable doubt.
5. In not acquitting defendant-appellant.

PRIMER ERROR

Felipe Loza, en cuya custodia vive la ofendida María Loza, declaró en el día de la vista ante el Juzgado de Primera Instancia que ella tenía 17 años de edad, porque en 1931 cuando él la recogió, al quedarse huérfana, apenas tendría un año de edad, tanto que no podía caminar aun, y desde entonces ha estado bajo su cuidado y protección, tratandola como hija y enviandola a la escuela pública, y acababa de dejar el segundo año de la High School cuando fué raptada por Elgar. El único testigo, por lo tanto, que con certeza podía declarar sobre la edad de la ofendida es Felipe, al amparo de quien está desde su mas tierna edad. Del año 1931 al 15 de julio de 1947, fecha esta en que el suceso tuvo lugar, sólo han transcurrido unos 16 años, que constituyen la edad de la ofendida.

SEGUNDO ERROR

Contiendese que María no era una mujer virgen en la fecha del suceso de autos, porque en anteriores ocasiones ha tenido comercio carnal con Pedro Alcomendas, en mayo, con Eustaquio Bigayan y Felipe Lazarte en junio, y con Wenceslao Ollado, en julio de 1947, mediante propina que variaba entre ₱1.00 y ₱5.00; declarando, además, Lazarte que él la preguntó cuanto cobraba y ella el contestó “. . . ₱5.00. . .” (t. n. t. p 51) y que “. . . después de terminar le dí un peso porque no tenía mas.” (t. n. t. p 52).

Aparte del testimonio unanime de estos cuatro testigos, que afirmaron cada uno haber usado a María mediante precio, Elgar aseveró que, despues de haber estado del 15 al 17 de julio y tenido varios accesos carnales con ella, él se enfermó de gonorrea.

Felipe declaró sobre la vida honesta que María llevaba en su casa y bajo su amparo, asegurando que nunca la reprendió por una conducta propia de una mala mujer, por el

contrario la ha tenido siempre por una doncella recatada, que cumple sus deberes dentro del hogar, va a sus clases en la escuela pública y acude a la iglesia, lugar de recogimiento y devoción.

José Ocampo, maestro de la escuela pública en Nabua, Camarines Sur, en cuya jurisdicción tuvo lugar el caso de que se trata, confirmando la aseveración de Felipe, testificó:

"P. Do you know Maria Loza?—R. Yes, sir, she was my pupil in two subjects last year, and this year I am her class advisor.

"P. How long you been a teacher of Maria Loza in the Nabua High School?—R. The whole last year and two weeks of last July.

"P. How many years have you been her teacher?—One year.

"P. During that period of time has Maria Loza committed some fault or indiscretion in your class?—R. She did not.

"P. What can you say as to her character as a student, what is her conduct?—R. She is good, and she is between 80 and 85 in conduct.

"P. When was she your student last?—R. July, 1947.

"P. During the time she has been your student, has there been any incident in which some of your students or any other person had come to you to complain of the conduct of Maria Loza?—R. No, sir.

"P. As a woman, what is your concept of Maria Loza?—R. That she is good.

"P. Have you known her to be a public woman?—R. No, sir. (T. n. t. págs. 111 y 112.)

Alcomendas, Bigayan, Lazarte y Ollado, quienes según ellos, usaron a María en mayo, junio y julio de 1947 no se han quejado de haberse enfermado, contagiados por ella, y eso que, de acuerdo con Ollado él la disfrutó en julio, en el mismo mes en que ella estuvo por dos a tres días con Elgar. En éste estaba latente la infección, como así se desprende de esta declaración del Dr. Enrique Uvero:

"JUZGADO:

"P. Supposing that a person has been sick of gonorrhea eight years age, if he submits to a test, will it be possible to determine if he is sick or not?—R. Not very sure, no doctor will ever be sure; I will not risk to pronounce the patient is cured unless there is a Wasserman test.

"P. Do you mean that after eight years a person may still be carrying germs of the disease without outside manifestations?—R. Yes, sir.

"P. And that at a future time there may be a recurrence?—R. Yes, sir, there may be a flare up. (T. n. t., págs. 101 y 102.)

María negó haber tenido conocimiento carnal con dichos cuatro testigos, Bigayan, Lazarte, Ollado y Alcomendas, y según ella, no conoce al primero, y solamente conoció a Lazarte y Alcomendas ya en la vista de este asunto.

Si la ofendida era una mujer pública, que se la podía usar por muy poca cosa, parece indudable que el acusado, como sus testigos que dicen la usaron mediante precio, haría lo mismo, sin necesidad de tomarse la molestia de llevarla de casa en casa para ocultarla de la autoridad de

Felipe y la búsqueda de los policías de Nabua, y tenerla por unos tres días seguidos con olvido de la conveniencia pública y de su propia familia, pues que Elgar es hombre casado. No se arriesgan la paz y la harmonia del hogar, ni se expone la libertad por una mujer, cuyos favores se pueden comprar por un peso, según Lazarte.

TERCER ERROR

Argumentase que el Juzgado *a quo* carecía de jurisdicción para conocer de esta causa porque no se ha probado que Felipe, que la promoviera en el Juzgado de Paz de Nabua, era el tutor, debidamente nombrado por el Juzgado, de María. La denuncia, iniciatoria de este asunto, reza:

"COMPLAINT

"The undersigned Felipe Loza, guardian of the minor Maria Loza Gutos, after having duly sworn to in accordance with law, accuses Maximino Elgar and Gaudencio Gavina of the crime of forcible abduction, committed as follows:

"That on or about the 15th day of July, 1947, at 4:00 o'clock a.m. in the barrio of San Francisco, municipality of Nabua, Camarines Sur, Philippines, and within the jurisdiction of this Court, the above named accused, conspiring and helping one another, willfully and unlawfully by means of force, threats, and intimidation abducted one Maria Loza Gutos, a minor above 12 but under 18 years of age, with lewd designs and against her will.

"Acts committed contrary to law.

"July 21, 1947.

"Sgd. FELIPE LOZA

"Complainant

"Subscribed and sworn to before me this 23rd day of July, 1947 at Nabua, Camarines Sur, Philippines.

"Sgd. JUAN B. BALLECER

Justice of the Peace."

Durante la vista, Felipe fué preguntado y repreguntado como recogió a María, después de quedarse huérfana de padre y madre a muy tierna edad, y la cuidó, considerandola y educandola como su propia hija, más ninguno ha cuestionado, ni presentado pruebas que no fuera él el tutor legal (guardian) de ella, quedándose, por lo tanto, sin impugnar lo que en su denuncia alega bajo juramento de que era el "guardian of the minor Maria Loza Gutos."

En Pueblo *vs.* Formento, el Tribunal Supremo, interpretando una alegación similar, sostuvo que era suficiente para conferir jurisdicción al Juzgado de origen. Dice:

"The undersigned Pia Aviles accuses Mariano Formento, Casimiro Formento and Godofredo Ruiz of the crime of forcible abduction of Buena Aviles and under oath states the following:

"That the undersigned is the guardian and aunt of the minor Buena Aviles who is an orphan and 14 years of age;

"As may be noted from the complaint above quoted the complainant stated under oath that in addition to being the aunt of the offended party Buena Aviles, she was also her guardian. When she testified in the lower court, she was not asked by the provincial fiscal nor by

the attorney for the defendant-appellant, much less by counsel for the latter's co-defendant Casimiro Formento, who is his brother, in what respect was she the offended party's guardian, whether she was a *de facto* guardian because she was her aunt and took care of her since she became an orphan by the death of her parents, or she was a judicial guardian appointed by a competent court for that purpose, fully in accordance with the provisions of section 551 of the Code of Civil Procedure. Such being the case, it would seem arbitrary to hold or even assume that the complainant was not, or in fact she is not the guardian of the offended party, merely because she failed to present documentary evidence to prove that fact. This is all the more true because before as well as during the trial, counsel for the appellant did not even attempt to prove that she had not been duly appointed as such guardian. This court is of the opinion that the complainant's affirmation made in solemn manner, that is, under oath, that she was the offended party's guardian, was sufficient to confer upon the justice of the peace, before whom she filed her complaint, authority to conduct the necessary preliminary investigation and also to confer upon the lower court authority to decide the case on its merits after the same was forwarded to it." (60 Phil., pp. 435 and 437.)

CUARTO Y QUINTO ERRORES

El Juzgado *a quo* halló a Elgar culpable de rapto con anuencia de María.

Entre 4:00 y 5:00 de la mañana del 15 de julio de 1947, antes de clarear el día, Elgar, al parecer en inteligencia con María, sacó a esta, al salir del retrete, situado a dos metros de distancia de la casa de Félix Roy, sita en el barrio de San Francisco, Nabua, en la que ella pasaba algunos días, con permiso de Felipe, porque eran parientes. De allí la llevó a la casa de Eustaquio Fortes, en el vecino barrio de San Juan, donde, según ella, llegaron en la semi-oscuridad del amanecer, tuvieron el primer acceso carnal y estuvieron hasta las 7:00 de la noche, hora en que la condujo a la de José Alcomendas, en el barrio de San Isidro, donde pasaron la noche y se quedaron durante el día 16 hasta las 9:00 de la noche, en que él la trasladó a la de un tal Idong o Pedro, en una sementera, en la que pernoctaron la segunda noche, y hacia el mediodía del 17, la mudó a la de Andrés Abala, en el sitio Maraát, casa en la cual, a eso de las cuatro de la tarde, fueron localizados y aprehendidos por el Sargento de Policía Regino Cernal, del municipio de Nabua. Todos estos hechos no se niegan por el acusado, porque sus dos principales defensas son, (a) que María era una mujer pública y (b) que el Juzgado *a quo* carecía de jurisdicción para conocer y fallar esta causa.

No encontrando error en la apreciación de los hechos, ni en la aplicación de la ley, hechas por el Juzgado de origen, como se recomienda por el Procurador General, se confirma en todas sus partes la sentencia de que se apela, con las costas al apelante. Así se ordena.

Jugo y Rodas, MM., están conformes.

Se confirma la sentencia.

UNITED STATES OF AMERICA PHILIPPINE ALIEN PROPERTY ADMINISTRATION

VESTING ORDER No. P-213
(Supplemental)

**RE: CASH OWNED BY THE IMPERIAL JAPANESE
ARMY**

Under the authority of the Trading with the Enemy Act, as amended, the Philippine Property Act of 1946, and Executive Order No. 9818, and pursuant to law, after investigation, it is hereby found:

That the property described as follows:

Cash in the sum of ₱5,568.50, proceeds of sale of enemy property belonging to a designated enemy country or unknown nationals thereof by the Enemy Property Custodian, covered by EPC Accounts Nos. S-736 and 1773, which amount is already remitted to the Philippine Alien Property Administration, is property within the Philippines owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owning to, or which is evidence of ownership or control by, a designated enemy country (Japan);

All determinations and action required by law having been made and taken, and, it being deemed necessary in the national interest;

There is hereby vested in the Philippine Alien Property Administrator the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States, in accordance with the provisions of the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this Order may, within two years from the date hereof, or within such further time as may be allowed, file with the Philippine Alien Property Administrator on Form PAPA-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

Executed at Manila, Philippines, on January 8, 1951.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 8, 1951 at _____.

RETURN ORDER NO. 74

The Vested Property Claims Committee having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein and no personal review of such final determination having been requested or undertaken,

It is ordered that the claimed property described below and in the determination, be returned upon the restitution by the claimant of the sum of ₱6,286.32, Philippine currency:

Claimant.—Lourdes Joven de Arkoncel, Legaspi St., Davao City.

Claim No. 1141.

Description of property.—A parcel of land (lot No. 482-C-2-R-3-A of the subdivision plan Psd-17627, being a portion of lot No. 482-C-2-R-3 described on plan, Psd-15287, G.L.R.O. record No. 317), situated in the City of Davao, Island of Mindanao. Bounded on the NE. by lot No. 482-C-2-R-3-G of the subdivision plan; on the SE. by lot No. 482-C-2-R-3-B of the subdivision plan; on the SW. by lot No. 527-B-1 of plan Psd-18182; and on the NW. by lot No. 527-B-1 of plan Psd-18182; containing an area of 5,806 square meters, more or less, covered by transfer certificate of title No. 2137, Book No. T-9, page 137 of the register of deeds for the City of Davao (now covered by transfer certificate of title No. T-1681 in the name of the Philippine Alien Property Administrator), vested under Vesting Order No. P-45 Supplemental), dated July 13, 1948.

Appropriate documents and papers effectuating this Order will issue.

Executed at Manila, Philippines, on January 4, 1951.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 4, 1951, at 3:30 p.m.

RETURN ORDER NO. 75

The Claims Adjudication Division having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein and no personal review of such final determination having been requested or undertaken,

It is ordered that the claimed property described below and in the determination, be returned:

Claimant.—Bernhard Laband, 36 East Seventh Street, New York City, U. S. A.

Claim No. 1239.

Description of property.—The sum of P621.56, representing the net proceeds realized from the sale of 150 shares of the capital stock of Benguet Consolidated Mining Company for P637.50 less broker's commission of P15.94, which shares were vested under V.O. No. P-250, dated June 30, 1947.

Executed at Manila, Philippines, on January 8, 1951.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 8, 1951, at _____.

RETURN ORDER NO. 76

The Vested Claims Committee having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein and no personal review of such final determination having been requested or undertaken,

It is ordered that the claimed property described below and in the determination, be returned upon the restitution by the claimant of the sum of P6,287.41, Philippine currency:

Claimant.—Vicente Joven % Atty. Isidro Bastida, Davao City.

Claim No. 1140.

Description of property.—A parcel of land (lot No. 482-C-2-R-3-D of the subdivision plan Psd-17627, being a portion of lot No. 482-C-2-R-3 described on plan Psd-15287, G.L.R.O. record No. 317), situated in the City of Davao Island of Mindanao. Bounded on the NE. by lot No. 482-C-2-R-3-G of the subdivision plan; on the SE. by lot No. 482-C-2-R-3-E of the subdivision plan and lot No. 3-G-4 of plan Psd-10190 and lot No. 527-B1 of plan Psd-18182; and on the NW. by lot No. 482-C-2-R-3-C of the subdivision plan; containing an area of 5,301 square meters, more or less, covered by transfer certificate of title No. 2138, Book No. T-9 Page 138, of the register of deeds for the City of Davao (now covered by transfer certificate of title No. T-1682 in the name of the Philippine Alien Property Administrator), vested under Vesting Order No. P-45 (supplemental), dated July 13, 1948.

Appropriate documents and papers effectuating this Order will issue.

Executed at Manila, Philippines, on January 12, 1951.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 12, 1951, at 11:00 a.m.

RETURN ORDER NO. 77

The Claims Adjudication Division having considered the claim set forth below and having issued a Determination with respect thereto, which is incorporated by reference herein and no personal review of such final determination having been requested or undertaken,

It is ordered that the claimed property described below and in the determination, be returned:

Claimant.—Delfin A. Baliton, San Fernando, La Union.

Claim No. 1209.

Description of property.—A piece of lot with an area of 945 square meters and located at barrio Pagdaraoan, San Fernando, La Union, declared for taxation purposes in the name of Delfin A. Baliton under tax declaration No. 5107. Bounded on the N. by a lot owned by Policarpio Rillon; on the E. by a lot owned by Severino Rillon; on the S. by a lot owned by Damaso Flores; and on the W. by a lot owned by Valentin Sobrepena, vested under V. O. No. P-386, dated September 26, 1947.

Appropriate documents and papers effectuating this Order will issue.

Executed at Manila, Philippines, on January 15, 1951.

JAMES MCI. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 15, 1951, at 3:45 p.m.

ORDER OF PAYMENT No. 5

Re: Debt Claim No. 1220 (Abbott Laboratories), V. O. Nos. P-423, P-423 (Supplemental) and P-423 (Supplemental) (K. Takizawa).

WHEREAS, the Philippine Alien Property Administrator vested certain properties located in the Philippines owned by K. Takizawa, a national of a designated enemy country (Japan), which are covered by Vesting Orders Nos. P-423, P-423 (Supplemental) and P-423 (Supplemental), dated

October 27, 1947, March 17, 1948 and June 9, 1950, respectively;

WHEREAS, on December 1, 1948, Abbott Laboratories, Inc., an American corporation organized and existing under the laws of the State of Illinois, with principal office and place of business in North Chicago, Illinois, and represented by its branch office in Manila, Philippines, filed a debt claim against K. Takizawa for the sum of \$413.55 with the interest at 6 per cent from September, 1941 to November, 1948;

WHEREAS, on September 6, 1950 after hearing, the Claims Adjudication Division (formerly Vested Property Claims Committee) allowed the said debt claim in the amount of ₱1,098.37, subject to the applicable provisions of the Trading with the Enemy Act, as amended;

WHEREAS, by Bar Order No. 9, which was published in the Federal Register on September 11, 1948, the Philippine Alien Property Administrator fixed November 30, 1948, after which the filing of debt claim in respect of K. Takizawa shall be barred;

WHEREAS, although the claim was filed on December 1, 1948, it was considered to be filed on time inasmuch as November 30, 1948, that last day for filing claims in respect of K. Takizawa, was a holiday;

WHEREAS, more than one hundred twenty days have expired since the first publication of the above-mentioned bar order;

WHEREAS, the vested assets covered by Vesting Orders Nos. P-423, P-423 (Suppl.) and P-423 (Suppl.) after deduction of expenses and costs of administration, are sufficient to pay other pending debt claims against K. Takizawa;

WHEREAS, there is no pending suit or proceedings pursuant to section 9 and 32 of the Trading with the Enemy Act, as amended, for the return of the property or proceeds covered by said Vesting Orders Nos. P-423, (Suppl.) and P-423 (Suppl.).

NOW, THEREFORE, it is ordered that the debt claim of Abbott Laboratories, Inc., for the sum of ₱1,098.37 be paid out of such money included in, or received as net proceeds from the sale, use, or other disposition, of the property covered by Vesting Orders

Nos. P-423, P-423 (Suppl.) and P-423 (Suppl.), as shall remain after deduction of expenses of administration and of taxes paid in respect of such property, and after deduction of such reserves for the future payment of taxes and expenses as may be established, in accordance with section 34(d) of the Trading with the Enemy Act, as amended.

Executed this 10th day of January, 1951 in Manila, Philippines.

JAMES MCL. HENDERSON
Administrator

Filed with the OFFICIAL GAZETTE on January 10, 1951, at 3:55 p.m.

[PUBLIC LAW 885—81ST CONGRESS]
[CHAPTER 1144—2D SESSION]

H. R. 8546

AN ACT TO AMEND THE PHILIPPINE
PROPERTY ACT OF 1946

*Be it enacted by the Senate and House of
Representatives of the United States of
America in Congress assembled:*

That the final proviso of section 3 of the Philippine Property Act of 1946 (60 Stat. 418) is hereby amended to read as follows:

"And provided further, That any suit authorized under the Trading With the Enemy Act, as amended, with respect to property vested in or transferred to the President of the United States, the Alien Property Custodian, or any officer or agency designated by the President of the United States hereunder, which at the time of such vesting or transfer was located within the Philippines, shall after July 4, 1946, be brought, in the appropriate court of first instance of the Republic of the Philippines, against the officer or agency hereunder designated by the President of the United States with such right of appeal therefrom as may be provided by law, but suits with respect to such property shall after ninety days from the enactment of this Act be brought only in the courts of the United States."

Approved, December 21, 1950.

LEGAL AND OFFICIAL NOTICES

Courts of First Instance

Republic of the Philippines
In the Court of First Instance of Samar
Thirteenth Judicial District
Branch VIII

NATURALIZATION CASE NO. 2.—*Petition for Philippine citizenship.* PEDRO KAM SING, *alias* SINGA, petitioner.

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable the Solicitor General, Manila,
Pedro Kam Sing *alias* Singa, Laoang, Samar,
and to all whom it may concern:

Whereas, a petition for Philippine citizenship pursuant to the provisions of Commonwealth Act No. 473, as amended by Commonwealth Act No. 535, has been presented to this Court of First Instance of Samar, Branch III, by Pedro Kam Sing *alias* Singa, wherein it is alleged that he was born on December 8, 1905, in Canton, China, from where he is now a citizen or subject; that his trade or profession is merchant since 1915, from which he derives an average annual income of P2,000; that he is married to Marina Irinco, who was born in Laoang, Province of Samar, Philippines, with whom he begot five children, who all were born in the municipality of Laoang, Samar; that he emigrated to the Philippines from Canton, China, and arrived at the port of Manila on May 1915; that he has continuously resided in the Philippines for a period of 35 years at least, immediately preceding the date of the filing of his petition; that he is able to speak and write English and Samar-Leyte dialect; that he owns personal and real property worth not less than P5,000; that he has enlisted his children in public schools duly recognized by the government; that he is entitled to the benefit given in section 2 of Commonwealth Act No. 473, for the reason that he is married to a Filipino woman; that he believes in the principles underlying the Philippine Constitution, and has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with the constituted Government as well as with the community where he lives; that he is not opposed to organized government nor he is affiliated with any association or groups of persons who uphold and teach doctrines opposing all organized government; and that he cites municipal mayor of Laoang, Eleuterio J. Dulay and Mr. Jacinto A. Tan, both citizens of the Philippines as witnesses whom he proposes to introduce in support of his petition; Wherefore, you are hereby given notice that the

in Laoang, Samar, on the 8th day of May, 1951, at 8 o'clock in the morning.

Let this notice be published once a week for three consecutive weeks in the newspaper *Nueva Era*, edited at Manila, and of general circulation, and in the *Official Gazette* for three consecutive months before the date set for hearing, and copies thereof posted in a public conspicuous places in the office of the Clerk of Court and in the post office of Laoang, where the petitioner resides.

Witness the Hon. S. C. Moscoso, Judge of the 13th Judicial District, Branch III, at Laoang, Samar, this 9th day of October, 1950.

SOTERO SABARRE
Clerk of Court

[11, 12; 1]

Republic of the Philippines
In the Court of First Instance of Cebu
Fourteenth Judicial District

CASE NO. 98.—*In re petition for Philippine citizenship by* LIM KIM SON *alias* FRANCISCO LIM KIM SO.

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable Solicitor General and Messrs. M. Cuenco and Nicolas N. Jumapao, Cebu City, attorneys for the petitioner, and to all whom it may concern:

Whereas, a petition for Philippine citizenship pursuant to Commonwealth Act No. 473, as amended by Commonwealth Act No. 535, has been presented to this Court of First Instance of Cebu by Lim Kim So *alias* Francisco Lim Kim So who alleges that he was born in Amoy, China, on April 12, 1898 or that he emigrated to the Philippines from China on or about the 20th day of July, 1910, and arrived at the port of Cebu, Philippines, on the vessel *Kaihong*; that he is a resident of Cebu City; that his trade or profession is that of a businessman in which he has been engaged since for various years; that he is married; that his wife's name is Too Ty, who was born in Amoy, Fukien, China on March 25, 1929; his former wife, deceased, Yee Ochia, and now resides at Cebu City; that he has children, and the name, date and place of birth, and place of residence of each of said children are as follows:

With his 1st wife—Yee Cohia (deceased): Lim Ching Suan—May 23, 1919—Amoy, China—Cebu City; Lim Ching Kee—Jan. 1924—Amoy, China—Amoy, China;

With his 2nd wife—Too Ty: Lim Ching Lian—March 25, 1929—Fukien, Amoy, China—Cebu City; Lim Ching Tian—Jan. 24, 1933—Fukien, Amoy, China—Cebu City; Lourdes Lim—Feb. 14, 1950—